

<u>Document</u>	<u>Page</u>
Affidavit of Robert B. Crall	81
Affidavit of Counsel In Support of Application for Order Shortening Time	88
Order Shortening Time	91
Memorandum of Points and Authorities In Support of Order of Contempt	91
Reporter's Transcript—Findings of Fact and Conclusions of Law and Order and Judgment of Criminal Contempt	95
Notice of Appeal	103
Order Staying Payment of Fine	104
Order Approving Bond	106
Affidavit of Richard Sarmento Re Compliance with Contempt Order	107
Certificate of Clerk To Record on Appeal	109
Opinion of the Court of Appeals	112
Order Denying Petition for Rehearing	123

CIVIL DOCKET
UNITED STATES DISTRICT COURT
C-70 1057 AJZ

**Granny Goose Foods, Inc. & Sunshine
Biscuits, Inc.**

vs.

**Brotherhood of Teamsters & Auto
Truck Drivers, Local No. 70 of Ala-
meda County et al**

**Attorneys for plaintiff: Littler, Mendelson & Fas-
tiff, 593 Market St., SF**

**Attorneys for defendant: Brundage, Neyhart, Gro-
din, Beeson, 100 Bush St., SF; Victor VanBourg,
45 Polk St., SF**

STATISTICAL RECORD

J. S. 5 mailed: 5-19-70

(Costs-Clerk) (Date: 5-19-70)

(Name or Receipt No.: 75707)

(Rec. 15.00)

(Date: May 22, 1970)

(Name or Receipt No: CDI-93)

(Disb.: 15.00)

(Date: 12-3-70)

(Name or Receipt No.: (office) 8CO51.

(Rec.: 5.00)

J.S. 6 mailed

(Costs-Marshal) (Date: Dec. 4, 1970)

(Name or Receipt No.: CD1-44)

(Disb.: 5.00)

Basis of Action: Labor Relations,

Natl. Labor Relations Act 29

U.S.C. 151

(Costs: Docket fee)

(Costs: Witness fees)

Action arose at:

(Costs: Depositions)

C-70 1057 AJZ

Granny Goose Foods et al vs Brotherhood
of Teamsters et al

Proceedings

Date

1970

May 19:

1. Filed petn for removal from Superior Court, State of Calif., County of Alameda, their #400637, summons, complaint, TRO & OSC.
2. Filed defts notice of removal.
3. Filed defts notice of mo to dissolve inj.
4. Filed defts affidavit in support of appli for Ord shortening time.
5. Filed defts removal bond in sum of \$250.00.

May 20:

6. Filed defts amended petn for removal.
7. Filed ORD shortening time for hrg of mo to dissolve TRO, 5-22-70. 9:30 A.M. (Levin)

May 22:

8. Filed defts notice of related cases, 70-883.
9. Filed pltfs notice of mo & mo to remand action to Superior Court State of Calif., County of Alameda.
10. Filed pltfs affidavit in support of appli. for ord shortening time.

11. Filed ORD shortening time to 5-22-70, 9:30 AM for hrg of mo to remand. (Levin)
ORD reassigned to Judge Zirpoli. (Levin)

May 26:

12. Filed pltfs suppl affidavit of George J. Tichy.
- 12A. Filed reassignment ord assigning action to Judge Zirpoli. (Harris)

May 27:

13. Filed pltfs declaration of Byron T. Hawkins.
14. Filed pltfs affidavit of Willis B. Court.
15. Filed Acknowledgmt of SVC by Kenneth N. Silbert
16. Filed Acknowledgmt of SVC by Victor J. Van Bourg

Jun. 4

17. Filed ORDER denying Mo to Dissolve State Court TRO (Zirpoli)

Dec. 1:

- 17-a. Filed Pltfs Motion for Contempt Judgement with Affidavits.
18. Filed ORDER shortening time to 10:30 A.M., 12/2/70 (Zirpoli)

Dec. 2:**

- 18-a. Entered JUDGEMENT & ORDER of Criminal Contempt as to Defts (Zirpoli)

Dec. 3:

19. Filed Notice of Appeal.

Dec. 4:

20. Filed Affidavit of Richard Sarmento re compliance with contempt Ord.

Dec. 2:**

ORDERED aft hrg-Judgment and Order of Criminal Cintempt as to Defts (Zirpoli)

21. Filed memo of Points and Auths in Suppt of Order of Contempt.

Dec. 3:

22. Filed ORDER CCA staying payment of fine imposed upon appellant by Dist Court pending appeal. (Hamlin)

Dec. 7:

23. Filed defts bond in amount of \$50,000.00.

Dec. 8:

24. Filed ORDER approving bond. (Zirpoli)

Dec. 28:

Made, Mailed Record on Appeal CCA

Littler, Mendelson & Fastiff
 593 Market Street
 San Francisco, California 94105
 (415) 433 1940

Attorneys for Plaintiffs

Superior Court of the State of California
 For the County of Alameda

No. 400637

Granny Goose Foods, Inc., a corporation; Sunshine Biscuits,
 Inc., a corporation; Standard Brands, Inc., a corporation,
 Plaintiffs,

vs.

Brotherhood of Teamsters & Auto Truck Drivers, Local
 No. 70 of Alameda County, International Brotherhood of
 Teamsters, Warehousemen & Helpers of America, an un-
 incorporated association; Western Conference of Teamsters,
 International Brotherhood of Teamsters, Chauffeurs, Ware-
 housemen & Helpers of America, an unincorporated asso-
 ciation; Robert Laird; James Muniz; Joseph Areno; Louis
 Riga; Charles Mack; Lawrence Diaz; Edward Painter; Alex
 Ybarraloza; Leroy Nunes; Stanley Botello; Ronald Rocha;
 Art Soto; Jack Sweeny; Richard S. Durassette; Robert
 Windsor; Al Leishman; Richard Saramento; First Doe
 Association to Fifth Doe Association, inclusive; First Doe
 to One Hundredth Doe, inclusive,

Defendants.

[Filed May 18, 1970]

FIRST AMENDED COMPLAINT
 FOR INJUNCTION

Plaintiffs complain of defendants, and each of them,
 and for its first cause of action, alleges as follows:

First Cause of Action

I

Plaintiff Granny Goose Foods, Inc. is a corporation existing under and by virtue of the laws of the State of California. Plaintiff Granny Goose Foods, Inc. is engaged in the manufacture and distribution of various food products in Alameda County and the State of California.

II

Plaintiff Sunshine Biscuits, Inc., is a corporation existing under and by virtue of the laws of the State of Delaware. Plaintiff Sunshine Biscuits, Inc., is authorized to do business in the State of California, and is engaged in the manufacture and distribution of various food products in Alameda County and the State of California.

III

Plaintiff Standard Brands, Inc., is a corporation existing under and by virtue of the laws of the State of Delaware. Plaintiff Standard Brands, Inc., is authorized to do business in the State of California and is engaged in the manufacture and distribution of various food products in Alameda County and the State of California.

IV

Defendant Brotherhood of Teamsters & Auto Truck Drivers Local No. 70 of Alameda County, International Brotherhood of Teamsters, Chauffeurs, Warehousemen & Helpers of America, is an unincorporated association commonly known as a labor union.

Defendant Western Conference of Teamsters, International Brotherhood of Teamsters, Chauffeurs, Warehousemen & Helpers of America, is an unincorporated association commonly known as a labor union.

Defendants Robert Laird, James Muniz, Joseph Areno, Louis Riga, Charles Mack, Lawrence Diaz, Edward Painter, Alex Ybarraloza, Leroy Nunes, Stanley Botello, Ronald Rocha, Art Soto, Jack Sweeny, Richard S. Durassette, Robert Windsor, Al Leishman and Richard Saramento are officers and/or agents of the other defendants.

V

Defendants First Doe Association to Fifth Doe Association, inclusive, and First Doe to One Hundredth Doe, inclusive, are sued herein under their fictitious names, their true names and capacities, whether corporations, association, or individuals being unknown to plaintiffs, and at such time as the correct names and capacities of said defendants have been ascertained, plaintiffs will ask leave of court to amend this Complaint accordingly.

VI

At all times material herein, plaintiffs have been, and now are, parties to collective bargaining agreements entitled "National Master Freight Agreement", hereinafter called "Master Agreement", and "Local 70 Pick-Up and Delivery Supplemental Agreement", hereinafter called "Local 70 Agreement". Such agreements contained the general terms and conditions of

employment for defendants' members who are employees of plaintiffs.

VII

The portions of said agreements which are material to this cause of action are Articles 7, 8 and 37 of the Master Agreement, and Articles 42 and 61 of the Local 70 Agreement. True and correct copies of said articles are attached hereto as Exhibit "A" and incorporated by reference as though fully set forth herein.

Article 61 of the Local 70 Agreement provides that the term of each such agreement is "subject to and controlled by all the provisions of Article 37," of the Master Agreement. Article 37 of the Master Agreement provides for the negotiation of changes and revisions in said agreement where there is no cancellation or termination of said agreement. Said article further provides that the only circumstances under which defendants are permitted to engage in economic recourse is "to support their requests for revisions if the parties fail to agree thereon."

VIII

Articles 7 and 8 of the Master Agreement and Article 42 of the Local 70 Agreement provide compulsory grievance procedures for the resolution of disputes which arise between plaintiffs and defendants. Those articles require that grievances or controversies between the parties are subject to said compulsory grievance procedures. Article 42 of the Local 70

Agreement specifically provides and requires that there be no strikes by defendants until all possible means of settlement provided for in the grievance procedures have been exhausted.

IX

On or about November 24, 1969, plaintiffs received a written letter from the National Freight Industry Negotiating Committee of the International Brotherhood of Teamsters, hereinafter called the "Committee". Said letter notified plaintiffs that the Committee was the bargaining agent for defendants and that on behalf of defendants the Committee desired "to negotiate changes and revisions in the terms and conditions of the Master Agreement and all supplements thereto . . . as provided in Article 37 thereof."

X

After November 24, 1969, and ending on April 2, 1970, the Committee and representatives of plaintiffs engaged in collective bargaining negotiations with regard to changes and revisions in the Master Agreement and the Local Supplements. On April 2, 1970, the representatives of defendants and plaintiffs reached agreement on proposed changes and revisions of said agreements, subject to ratification by Teamsters Unions throughout the nation. Said agreement has never been rejected by the Teamsters Unions throughout the nation nor has any impasse or deadlock on collective bargaining issues been declared by the bargaining representatives of defendants and plaintiff.

XI

Since on or about May 14, 1970, and continuing through the date hereof, defendants have caused the facilities of Granny Goose Foods, Inc. and Sunshine Biscuits, Inc. within the County of Alameda to be picketed and caused said plaintiffs' employees to stop work and since on or about May 18, 1970, and continuing through the date hereof, defendants have caused the facility of Standard Brands, Inc. within the County of Alameda to be picketed and caused its employees to stop work. Said work stoppage was directed, induced and encouraged by the officers, agents and representatives of defendants. Plaintiffs have been informed and believe that said work stoppage will continue unless judicial relief is obtained.

XII

Plaintiffs have at all times performed fully and faithfully and have followed each and every act required of plaintiffs to be performed under said agreements.

XIII

By the actions and conduct alleged herein, defendants breached the Master Agreement and the Local 70 Agreement between plaintiffs and defendants, and, in particular, the grievance provision thereof.

XIV

By reason of the aforesaid activity in breach of the agreements, plaintiffs have been and are being prevented from conducting their normal business activity

as manufacturers and distributors of food products. Plaintiffs have already suffered and will continue to suffer great and irreparable damage by reason of defendants' actions in that plaintiffs are and will be unable to service their customers and will lose their business.

XV

Defendants have threatened to and will, unless restrained and enjoined by this Court, continue said work stoppage. Plaintiffs have no plain, speedy or adequate remedy at law, and unless the defendants are immediately restrained from continuing their unlawful actions, plaintiffs will sustain great and irreparable injury and damage as hereinabove alleged. Plaintiffs' business as manufacturers and distributors of food products is one which requires reliability and continuity of service; any disruption of such service will cause irreparable injury to plaintiffs. Furthermore, because of the inability of plaintiffs to service their customers, the good will of each plaintiff has been damaged and will continue to be damaged as long as said unlawful acts continue.

Second Cause of Action

Plaintiffs complain of defendants, and each of them, and for a second cause of action allege as follows:

I

The allegations as contained in paragraphs I through XV of the First Cause of Action are incor-

porated herein by reference as though fully set forth herein.

II

Defendants, by their actions alleged herein, proximately caused damage to plaintiffs in an amount not less than Four Hundred Thousand Dollars (\$400,000.00) per day since May 14, 1970. Plaintiffs believe that such damages will continue for each day that defendants continue to engage in said illegal work stoppage. Plaintiffs presently request Eight Hundred Thousand Dollars (\$800,000.00) in actual damages on their behalf with the hope, however, that such damages do not reach this figure and that the work stoppage is promptly terminated. Plaintiffs request leave to amend the Complaint to show actual damages after they have been determined.

Wherefore, plaintiffs pray judgment against defendants, and each of them, as follows:

1. That the officers, agents, representatives, employees and members of defendants, and each and every and all other persons acting at the direction of or in concert with defendants be permanently enjoined and restrained from engaging in any of the following activities:

- (a) Directing or ordering, or otherwise inducing, employees of plaintiffs not to perform work for plaintiffs.

- (b) Picketing at any facilities of plaintiffs within the State of California where the effect of

such picketing is to induce, encourage or cause employees of plaintiffs not to work for plaintiffs.

(c) Engaging in any activity for the purpose of causing, or with the effect of causing, a stoppage of work for, or strike against plaintiffs.

(d) Failing to withdraw any orders or directions to employees of plaintiffs that said employees should engage in a cessation of work for plaintiffs or otherwise engage in any strike or stoppage of work.

2. That this Court make an Order directing defendants herein, and each of them, to show cause at a time and place appointed in said Order why the defendants, and each of them, and all others referred to in paragraph 1 of this prayer should not be enjoined and restrained during the pendency of this action from doing any of the things hereinabove mentioned in paragraph 1 of this prayer.

3. That a Temporary Restraining Order be granted to plaintiffs, enjoining and restraining defendants, and each of them, and all others referred to in paragraph 1 of this prayer from doing any of the things and acts hereinabove mentioned in paragraph 1 of this prayer pending the hearing of said Order to Show Cause.

4. That upon the hearing of said Order to Show Cause a Preliminary Injunction be granted herein, enjoining and restraining defendants, and each of them, and all others referred to in paragraph 1 of this prayer during the pendency of this action.

5. That plaintiffs be granted damages in the amount of Eight Hundred Thousand Dollars (\$800,000.00).

6. That plaintiffs be allowed their costs of suit herein incurred.

Dated: May 18, 1970.

Littler, Mendelson & Fastiff

By: /s/ Wesley J. Fastiff
Wesley J. Fastiff

By: /s/ George J. Tichy, II
George J. Tichy, II

By: /s/ Robert M. Lieber
Robert M. Lieber

Attorneys for Plaintiffs

[Title omitted in printing]

TEMPORARY RESTRAINING ORDER AND ORDER TO SHOW CAUSE

Upon reading the verified complaint on file in this action and the supporting declarations and the points and authorities filed herewith, and it appearing to the satisfaction of the Court therefrom that this is a proper case for granting a Temporary Restraining Order and an Order to Show Cause, and that unless a Temporary Restraining Order is granted as prayed for, plaintiffs will suffer great and irreparable injury before the matter can be heard on notice;

Now, Therefore:

It Is Hereby Ordered that the above-named individual defendants and Brotherhood of Teamsters & Auto Truck Drivers, Local No. 70 of Alameda County, International Brotherhood of Teamsters, Chauffeurs, Warehousemen & Helpers of America, are, and each of them is, ordered to appear before this Court at the Court House in Oakland, California, in the courtroom of the Presiding Judge, at 2:00 o'clock P.M. on the 26th day of May, 1970, then and there to show cause, if any they have, why they and their officers, agents, representatives, employees and members and each and every and all other persons acting at the direction of or in concert with said defendants, should not be enjoined and restrained from engaging in any of the following activities during the pendency of this action or until further order of this Court:

(a) Directing or ordering or otherwise inducing, the employees of the plaintiffs not to perform work for any of said companies;

(b) Picketing at any facility or situs of equipment of the plaintiffs where the effect of such picketing is to induce, encourage or cause company employees not to work for plaintiffs;

(c) Engaging in any activity for the purpose of causing, or with the effect of causing, a stoppage of work, or strike against plaintiffs;

(d) Failing to withdraw any orders or directions to employees of plaintiffs that said employees should engage in a cessation of work for such companies.

(e) Wilful disobedience of paragraphs (a) through (d) above on the part of any person shall be deemed a violation of Section 166.4 of the California Penal Code, and the appropriate law enforcement officials are authorized and requested to take such action as may appear necessary in order to insure full and complete obedience and compliance of paragraphs (a) through (d) of this Order.

It Is Further Ordered that pending the hearing of this Order to Show Cause, the above-named individual defendants and Brotherhood of Teamsters & Auto Truck Drivers, Local No. 70 of Alameda County, International Brotherhood of Teamsters, Chauffeurs, Warehousemen & Helpers of America, and each of them, and their officers, agents, representatives, employees and members, and each and every and all other persons acting at the direction of or in concert with said defendants be and they hereby are restrained and enjoined from doing any of the acts or things hereinabove set forth in paragraphs (a) through (d) hereof.

It Is Further Ordered that plaintiffs furnish a surety bond in the penal sum of \$20,000.

Dated: May 15, 1970.

/s/ Lewis E. Lercara

Judge of the Superior Court

[Title omitted in printing]

[Filed May 18, 1970]

**MODIFIED TEMPORARY RESTRAINING
ORDER AND ORDER TO SHOW CAUSE**

Upon reading the verified First Amended Complaint on file in this action and the supporting declarations and the points and authorities filed herewith, and it appearing to the satisfaction of the Court therefrom that this is a proper case for granting a Temporary Restraining Order and an Order to Show Cause, and that unless a Temporary Restraining Order is granted as prayed for, plaintiffs will suffer great and irreparable injury before the matter can be heard on notice;

Now, Therefore:

It Is Hereby Ordered that the above-named individual defendants and Brotherhood of Teamsters & Auto Truck Drivers, Local No. 70 of Alameda County, International Brotherhood of Teamsters, Chauffeurs, Warehousemen & Helpers of America, are, and each of them is, ordered to appear before this Court at the Court House in Oakland, California, in the courtroom of the Presiding Judge, at 2:00 o'clock P.M. on the 26th day of May, 1970, then and there to show cause, if any they have, why they and their officers, agents, representatives, employees and members and each and every and all other persons acting at the direction of or in concert with said defendants, should not be enjoined and restrained from engaging in any of the following activities during the pendency of this action or until further order of this Court:

(a) Directing or ordering or otherwise inducing, the employees of the plaintiffs not to perform work for any of said companies;

(b) Picketing at any facility or situs of equipment of the plaintiffs where the effect of such picketing is to induce, encourage or cause company employees not to work for plaintiffs;

(c) Engaging in any activity for the purpose of causing or with the effect of causing, a stoppage of work for, or strike against plaintiffs;

(d) Failing to withdraw any orders or directions to employees of plaintiffs that said employees should engage in a cessation of work for such companies.

It Is Further Ordered that pending the hearing of this Order to Show Cause, the above-named defendants and Brotherhood of Teamsters & Auto Truck Drivers, Local No. 70 of Alameda County, International Brotherhood of Teamsters, Chauffeurs, Warehousemen & Helpers of America, and each of them, and their officers, agents, representatives, employees and members, and each and every and all other persons acting at the direction of or in concert with said defendants, be and they hereby are restrained and enjoined from doing any of the acts or things hereinabove set forth in paragraphs (a) through (d) hereof.

Wilful disobedience of paragraphs (a) through (d) above on the part of any person shall be deemed a violation of Section 166.4 of the California Penal Code, and the appropriate law enforcement officials

are authorized to take such action as may appear necessary in order to insure full and complete obedience and compliance of paragraphs (a) through (d) of this Order.

It Is Further Ordered that plaintiffs furnish a surety bond in the penal sum of \$20,000.00.

Dated: May 18, 1970.

/s/ Lewis E. Lercara
Judge of the Superior Court

Kenneth N. Silbert
 Brundage, Neyhart, Grodin & Beeson
 100 Bush Street, Suite 2600
 San Francisco, California 94104
 Telephone: 986-4060
 Attorneys for Defendants

United States District Court
 Northern District of California

No. C-70 1057 GSL

Granny Goose Foods, Inc., a corporation; and Sunshine Biscuits, Inc., a corporation,

Plaintiffs,

vs.

Brotherhood of Teamsters & Auto Truck Drivers, Local No. 70 of Alameda County, International Brotherhood of Teamsters, Chauffeurs, Warehousemen & Helpers of America, an unincorporated association; Western Conference of Teamsters, International Brotherhood of Teamsters, Chauffeurs, Warehousemen & Helpers of America, an unincorporated association; Robert Laird; James Muniz; Joseph Arenos; Louis Riga; Charles Mack; Lawrence Diaz; Edward Painter; Alex Ybarraloz; Leroy Nunes; Stanley Botello; Ronald Rocha; Art Soto; Jack Sweeny; Richard S. Durasette; Robert Windsor; Al Leishman; First Doe Association to Fifth Doe Association, inclusive; First Doe to One Hundredth Doe, inclusive,

Defendants.

[Filed May 10, 1970]

PETITION FOR REMOVAL OF CIVIL ACTION

Brotherhood of Teamsters & Auto Truck Drivers,
 Local No. 70 of Alameda County, International Brotherhood of Teamsters, Chauffeurs, Warehousemen &

Helpers of America, an unincorporated association; Western Conference of Teamsters, International Brotherhood of Teamsters, Chauffeurs, Warehousemen & Helpers of America, an unincorporated association, Robert Laird, James Muniz; Joseph Arenó; Louis Riga; Charles Mack; Lawrence Diaz; Edward Painter; Alex Ybarraloza; Leroy Nunes; Stanley Botello; Ronald Rocha; Art Soto; Jack Sweeny; Richard S. Durassette; Robert Windsor; Al Leishman, as and for their petition for removal of the above-entitled action from the Superior Court of the State of California in and for the County of Alameda, in which it is numbered 400637, to the United States District Court for the Northern District of California, show and allege as follows:

I.

Petitioners are defendants who have been served in the civil action commenced on or about May 15, 1970, in the Superior Court of the State of California, in and for the County of Alameda No. 400637 captioned as follows:

Granny Goose Food, Inc., a corporation; and
Sunshine Biscuits, Inc., a corporation,
Plaintiffs,

vs.

Brotherhood of Teamsters & Auto Truck Drivers, Local No. 70 of Alameda County, International Brotherhood of Teamsters, Chauffeurs, Warehousemen & Helpers of America, an unincorporated association; Western Conference of Teamsters, International Brotherhood of Teamsters, Chauffeurs, Warehousemen & Helpers of America, an unincorporated association; Robert Laird; James Muniz; Joseph Areno; Louis Riga; Charles Mack; Lawrence Diaz; Edward Painter; Alex Ybarraloz; Leroy Nunes; Stanley Botello; Ronald Rocha; Art Soto; Jack Sweeny; Richard S. Durassette; Robert Windsor; Al Leishman; First Doe Association to Fifth Doe Association, inclusive; First Doe to One Hundredth Doe, inclusive,

Defendants.

II.

Service of summons, complaint, order to show cause and temporary restraining order was made on defendants, who are petitioners herein, on May 15, 1970.

Said complaint is the initial pleading setting forth the claim upon which the action is based, and defendants first received a copy of said initial pleading in the manner aforesaid on May 15, 1970.

III.

The following constitute all of the process, pleadings and orders served upon defendants in said action: Summons, Complaint, Temporary Restraining Order and Order to Show Cause, and true copies of which are attached hereto as Exhibits A, B, and C, respectively, and are made a part of this petition.

IV.

The action filed in the Superior Court, as aforesaid, is a civil action of which this Court has original jurisdiction under Section 301 of the National Labor Relations Act, as amended (29 U.S.C. Section 185). More particularly, the complaint alleges in substance that petitioners have violated a collective bargaining agreement by engaging in a work stoppage and picketing against plaintiffs, which are employees engaged in the production and distribution to retail outlets of various baked goods. The business operations of plaintiffs, and each of them, affect interstate commerce within the meaning of Title 29, U.S.C. Section 185 and within the meaning of the National Labor Relations Act, as amended (29 U.S.C. Secs. 151 et seq.). Petitioners Brotherhood of Teamsters & Auto Truck Drivers, Local 70 and Western Conference of Teamsters, are labor organizations which represent employees in industries affecting commerce within the

meaning of Section 2(5) and (7) of the National Labor Relations Act, as amended (29 U.S.C., 152(5) and (7).) The operations of said petitioners also affect interstate commerce within the meaning of Title 29 U.S.C. Sec. 185 and within the meaning of the National Labor Relations Act, as amended (29 U.S.C. Secs. 151 et seq.). Defendants are entitled to remove this proceeding to this Court under Title 28 U.S.C. Section 1441.

V.

Defendants file herewith a bond with good and sufficient surety conditioned that defendants will pay all costs and disbursements incurred by reason of this removal proceeding should it be determined that the action was not removable or was improperly removed.

Wherefore, defendants pray that the above action now pending against it in the Superior Court of the State of California in and for the County of Alameda, No. 400637 hereby be removed from said state court to this Court, and that this Court assume jurisdiction thereof for all purposes.

Date: May 19, 1970

Brundage, Neyhart, Grodin & Beeson

By: /s/ Kenneth N. Silbert

Verification

I, Kenneth N. Silbert, declare:

I am the attorney for defendants herein; my office is in the City and County of San Francisco; defend-

ants are absent from said City and County and for that reason I make this verification.

I have read the foregoing Petition for Removal and know the contents thereof; the same is true of my own knowledge, except as to the matters which are stated therein on information and belief, and as to those matters, I believe it to be true.

I declare under penalty of perjury that the foregoing is true and correct.

Executed at San Francisco, California, on May 19, 1970.

/s/ Kenneth N. Silbert
Kenneth N. Silbert

[Title omitted in printing]

[Filed May 20, 1970]

AMENDED PETITION FOR REMOVAL OF CIVIL ACTION

Brotherhood of Teamsters & Auto Truck Drivers, Local No. 70 of Alameda County, International Brotherhood of Teamsters, Chauffeurs, Warehousemen & Helpers of America, an unincorporated association, Western Conference of Teamsters, International Brotherhood of Teamsters, Chauffeurs, Warehousemen & Helpers of America, an unincorporated association; Robert Laird; James Muniz; Joseph Areno; Louis Riga; Charles Mack; Lawrence Diaz; Edward Painter; Alex Ybarralozza; Leroy Nunes; Stanley Botello; Ronald Rocha; Art Soto; Jack Sweeny; Richard S. Durassette; Robert Windsor; Al

Leishman; Dick Saramento, hereby file this Amended Petition for Removal, alleging as follows:

I.

Petitioners adopt each and every allegation contained in the Petition for Removal and hereby include said allegations in this amended petition.

II.

On May 18, 1970, the complaint filed in the Superior Court for the State of California in and for the County of Alameda, No. 400637 was amended by plaintiffs to include the name of an additional plaintiff, Standard Brands, Inc., and the name of an additional defendant, Dick Saramento.

III.

Said amended complaint was served on petitioners who are named as defendants therein on or about May 18, 1970.

IV.

The Petition for Removal herein was filed with the court prior to the time that counsel for petitioners had notice of the filing of the amended complaint in the state court. For that reason the amended complaint was not attached to the petition herein as an exhibit. Said amended complaint is attached hereto as Exhibit A.

Wherefore, defendants pray that the above action now pending against them in the Superior Court of the State of California in and for the County of Ala-

meda, No. 400637 as amended be removed from said state court to this Court, and this Court assume jurisdiction thereof for all purposes.

Date: May 20, 1970.

Brundage, Neyhart, Grodin & Beeson

By Kenneth N. Silbert

Kenneth N. Silbert

Verification

I, Kenneth N. Silbert, declare:

I am the attorney for defendants herein; my office is in the City and County of San Francisco; defendants are absent from said City and County and for that reason I make this verification.

I have read the foregoing Amended Petition for Removal and know the contents thereof; the same is true of my own knowledge, except as to the matters which are stated therein on information and belief, and as to those matters, I believe it to be true.

I declare under penalty of perjury that the foregoing is true and correct.

Executed at San Francisco, California, on May 20, 1970.

/s/ Kenneth N. Silbert
Kenneth N. Silbert

(Letterhead of Northwestern National
Insurance Company of Milwaukee, Wisconsin
Stock Company . Organized 1869)

In the District Court of the United States for the
Northern District of California

C-70 1057GSL

Granny Goose Foods, Inc., et al.,
Plaintiffs

vs.

Brotherhood of Teamsters and Auto Truck
Drivers, Local 70, et al.,
Defendants.

[Filed May 19, 1970]

BOND ON REMOVAL

Know All Men by These Presents:

That we, Brotherhood of Teamsters and Auto Truck Drivers, Local 70, et al., Defendants as Principal(s), and the Northwestern National Insurance Company of Milwaukee, Wisconsin a corporation organized under the laws of the State of Wisconsin and authorized to do a general surety business in the State of California, as Surety, are held and firmly bound unto Granny Goose Foods, Inc., et al, Plaintiff(s) above named, in the sum of Two Hundred Fifty and No/100 (\$250.00)

Dollars, lawful money of the United States of America, for the payment whereof, well and truly to be made, we bind ourselves, our heirs, executors, successors and assigns, jointly and severally by these presents.

Whereas, the Principal(s) has (have) filed, or is about to file, a petition in the above entitled Court for the removal of a certain cause therein pending as above entitled.

Now, Therefore, the Condition of This Obligation Is Such, That if the Principal(s) shall pay all costs and disbursements incurred by Plaintiff(s) should it be determined the cause is not removable or is improperly removed, then this obligation shall be void, otherwise to remain in full force and effect.

Signed, sealed and dated at San Francisco, California, this 19th day of May, 1970.

Bond No. S-662815

Northwestern National Insurance Company
of Milwaukee, Wisconsin

By /s/ M. Danks

M. Danks Attorney-in-Fact

The premium charge for this bond is \$10.00 for the term.

[Title omitted in printing]

[Filed May 19, 1970]

**NOTICE AND MOTION
TO DISSOLVE INJUNCTION**

Defendants Brotherhood of Teamsters & Auto Truck Drivers, Local No. 70 of Alameda County, International Brotherhood of Teamsters, Chauffeurs, Warehousemen & Helpers of America, an unincorporated association; Western Conference of Teamsters, Chauffeurs, Warehousemen & Helpers of America, an unincorporated association; Robert Laird; James Muniz; Joseph Areno; Louis Riga; Charles Mack; Lawrence Diaz; Edward Painter; Alex Ybarralozza; Leroy Nunes; Stanley Botello; Ronald Rocha; Art Soto; Jack Sweeny; Richard S. Durasette; Robert Windsor; Al Leishman, in the above-entitled case move for an order dissolving the temporary restraining order heretofore issued herein on the ground that the Court is without jurisdiction to maintain the temporary restraining order in effect under Section 4 of the Norris LaGuardia Act 29 U.S.C. 104.

In support whereof, the aforesaid defendants rely upon the Complaint herein, the Memorandum of Points and Authorities filed in support hereof, and all other papers of record in this proceeding.

Date: May 19, 1970

Brundage, Neyhart, Grodin & Beeson
By: /s/ Kenneth N. Silbert
Kenneth N. Silbert

Notice

To: Granny Goose Foods Inc. and Sunshine Biscuits, Inc., and its attorneys Littler, Mendelson & Fastiff; Wesley J. Fastiff; and George J. Tichy, II.

Please take notice that the above motion to dissolve the injunction in this proceeding will be brought on for hearing at 9:30 a.m. on the 22nd day of May, 1970, or as soon thereafter as counsel can be heard, in the Courtroom of the Honorable Gerald S. Levin, United States District Court for the Northern District of California, 450 Golden Gate Avenue, San Francisco, California.

Date:

Brundage, Neyhart, Grodin & Beeson
By: /s/ Kenneth N. Silbert
Kenneth N. Silbert

[Title omitted in printing]

**POINTS AND AUTHORITIES
IN SUPPORT OF MOTION
TO DISSOLVE INJUNCTION**

An injunction issued by a state court against striking and picketing activities by a labor organization and its agents must be dismissed for lack of jurisdiction by a federal court following removal of the proceeding.

Avco Corporation v. Aero Lodge No. 735, 390 USS.
557

Sinclair Refining Co. v. Atkinson, 370 U.S. 195

Date: May 19, 1970

Brundage, Neyhart, Grodin & Beeson

By: /s/ Kenneth N. Silbert

Kenneth N. Silbert

[Title omitted in printing]

[Filed May 19, 1970]

**AFFIDAVIT OF COUNSEL IN SUPPORT OF
APPLICATION FOR ORDER
SHORTENING TIME**

City and County of San Francisco
State of California—ss

Kenneth N. Silbert, being first duly sworn, says as follows:

I am counsel for the Defendants in the above-entitled case, and have represented them at all stages of this proceeding.

The Complaint in this matter was originally filed in the Superior Court for Alameda County, and was based upon an alleged breach of contract by the Defendant Teamster unions and their agents. The relief sought is both injunctive and damages.

On May 15th, a temporary restraining order was issued by the Superior Court, enjoining striking and picketing activity. The temporary restraining order remains in effect at the present time, insofar as shown by the record in this case. On May 19th, 1970, the proceeding was removed to the United States District Court for the Northern District of California.

The dispute giving rise to the picketing and strike herein involves the question of whether the employer-plaintiffs are parties to or bound by the National Master Freight Agreement, and Teamster Local 70 supplement thereto. Negotiations for that contract are currently taking place on a nationwide basis in Washington, D.C. It is the position of the petitioner Teamster Local 70 that the employer-plaintiffs are not bound by the current negotiations. The question of whether or not the employer-plaintiffs are so bound is currently before the National Labor Relations Board in the form of unfair labor practice charges.

It is my legal opinion, based upon clear authority in United States Supreme Court decisions, that the State Court injunction is subject to immediate dissolution by this Court, and that said injunction unlawfully purports to prohibit the defendants from engaging in the conduct which it restrains. In view of the unsettled condition in bargaining negotiations involving Defendant Local 70, it is necessary and

appropriate at the earliest possible moment to resolve the issue as to the validity of the outstanding State Court injunction.

Date: May 19, 1970

/s/ Kenneth N. Silbert,
Kenneth N. Silbert

Sworn and subscribed to before me this 19th day of May, 1970.

[Seal]

/s/ Belle Kendrick,
Notary Public, California

My Commission expires October 29, 1973.

[Title omitted in printing]

[Filed May 20, 1970]

ORDER SHORTENING TIME

This case having come before the Court upon Defendants' application for an order shortening time for hearing upon their motion to dissolve the temporary restraining order in effect against them, and good cause therefor having been shown:

Now Therefore, It Is Ordered that Defendants' application be and hereby is granted, and that said motion shall come on for hearing at 9:30 a.m. on the 22nd day of May, 1970, or as soon thereafter as counsel can be heard in the Courtroom of the Honorable Gerald S. Levin, United States District Court for the Northern District of California, 450 Golden Gate Avenue, San Francisco, California.

Date: May 19, 1970.

/s/ Gerald S. Levin
United States District Judge

Kenneth N. Silbert
 Brundage, Neyhart, Grodin & Beeson
 100 Bush Street, Suite 2600
 San Francisco, California 94104
 Telephone: 986-4060

Victor Van Bourg
 45 Polk Street
 San Francisco, California 94102
 Telephone: 864-4000
 Attorneys for Defendants

United States District Court
 For the Northern District of California

Granny Goose Foods, Inc., et al.,
 Plaintiffs,

vs.

Brotherhood of Teamsters and Auto
 Truck Drivers, Local No. 70, et al.,
 Defendants.

Civil No.
 C-70
 1057 GSL

California Trucking Association, Inc.,
 Plaintiff,

vs.

Brotherhood Of Teamsters & Auto
 Truck Drivers Local No. 70, et al.,
 Defendants.

Civil No.
 C-70
 883 AJZ

[Filed May 22, 1970]

NOTICE OF RELATED CASES

Defendants in the above captioned cases hereby give notice that said cases are related in that they involve similar issues of fact with respect to the existence and effect of certain labor agreements, and involve identical issues of law with respect to the power and obligation of this Court to dissolve certain State Court orders enjoining Defendants from engaging in economic activity in a labor disputes.

Accordingly it is requested that case no. C-70 1057 GSL presently scheduled to be heard by the Honorable Gerald Levin, be transferred to and heard by the Honorable Judge Zirpoli, before whom case no. C-70 883 AJZ is presently scheduled to be heard on May 27, 1970 at 1:00 p.m.

Date: May 22, 1970.

Brundage Neyhart Grodin & Beeson

By /s/ Duane B. Beeson

By /s/ Victor Van Bourg

It Is So Ordered:

Date: May 21, 1970.

/s/ Gerald S. Levin

United States District Judge

Date: May 21, 1970.

/s/ Alfonso J. Zirpoli

United States District Judge

Littler, Mendelson & Fastiff
593 Market Street
San Francisco, California 94105
(415) 433-1940
Attorneys for Plaintiffs

United States District Court
for the Northern District
of California

Civil No. C-70-1057-GSL

Granny Goose Foods, Inc., et al.,
vs. Plaintiffs,

Brotherhood of Teamsters & Auto Truck
Drivers, Local No. 70 of Alameda County,
International Brotherhood of Teamsters,
Chauffeurs, Warehousemen & Helpers of
America, et al.,
Defendants.

[Filed May 22, 1970]

NOTICE OF MOTION TO REMAND

To Defendants above-named and their attorneys
Brundage, Neyhart, Grodin & Beeson, 100 Bush
Street, San Francisco, California:

Please Take Notice that the undersigned will move
this Court at the courtroom of the Honorable Alfonso
J. Zirpoli on the 22nd day of May, 1970, at 9:30 a.m.
of that day, or as soon thereafter as counsel can be
heard, for an Order remanding the above-entitled

action to the Superior Court of the State of California, for the County of Alameda, pursuant to the provisions of Section 1447 of Title 28 of the United States Code, on the ground that the case was removed to this Court improvidently and without jurisdiction because defendants waived their right to removal by submitting to the jurisdiction of said State Court, as is more particularly shown by the Affidavit of George J. Tichy, II, which is provided herewith, and for such other and further relief as may be just, together with costs.

Littler, Mendelson & Fastiff
By /s/ George J. Tichy, II
Attorneys for Plaintiffs

May 21, 1970.

[Title omitted in printing]

MOTION TO REMAND

Plaintiffs move this Court for an Order remanding this cause to the Superior Court of the State of California, in and for the County of Alameda on the ground that the cause was improperly removed and is not within the jurisdiction of this Court in that defendants have waived their right to removal by submitting to the jurisdiction of the state court. Such Motion is based upon the pleadings and proceedings heretofore had herein and upon the Affidavit of George J. Tichy, II and the memorandum in support of Motion to Remand which are filed herewith.

Dated: May 1, 1970.

Littler, Mendelson & Fastiff
By /s/ George J. Tichy, II
Attorneys for Plaintiffs

[Title omitted in printing]

[Filed May 22, 1970]

MEMORANDUM OF POINTS AND AUTHORITIES IN SUPPORT OF MOTION TO REMAND AND IN OPPOSITION TO MOTION TO DIS-
SOLVE INJUNCTION

I

The plaintiffs herein contend that the cause herein was improperly removed to the federal district court and must be remanded to the state court on the ground that the defendant union, by electing to proceed in the state court on the merits, waived its right of removal.

A. The weight of authority supports the plaintiffs' position. Thus, in *Southwest Truck Body Company v. Collins*, 291 F.Supp. 658 (W.D. Mo. 1968), the court remanded the cause to the state court on the ground that the defendants waived their right to removal by submitting to the jurisdiction of the state court. There, the defendants filed a petition for a writ of prohibition, prohibiting the trial judge from enforcing a temporary injunction issued *ex parte*. The defendants, in addition, filed motions (1) to quash contempt citations for violation of the terms of the injunction and (2) to dissolve the injunction.

The court held that the defendants, by seeking affirmative relief, had "elected their forum" since favorable action by a state court on any of the motions or the petition for prohibition would have resulted in dismissal of the action. Voluntary submission to the state court of issues dispositive of the cause of action precludes a right of removal.

Similarly, in *Vendetti v. Schuster*, 242 F.Supp. 746 (W.D. Pa. 1965), the defendant in a state court trespass action waived his right of removal by submitting his federal question to the state court without reservation. The court quoted *O. G. Orr & Co. v. Fireman's Fund Insurance Company*, 36 F.2d 378 (S.D. N.Y. 1929):

"Having thus on its own initiative submitted itself to the jurisdiction of the state court, and having unsuccessfully tried there an issue, which, if successfully maintained, would have resulted in a dismissal of the action, the defendant elected its own forum; and, having made the election, it cannot thereafter be allowed to remove the case to the federal court The defendant asks a new day in a new court on an issue which has been finally settled. . . . The defendant cannot thus retrieve a lost issue."

In support of its conclusion that litigation of issues in the State court operates to waive the right of removal, the court cited substantial authority, including, *inter alia*, *General Phoenix Corp. v. Malyon*, 88 F.Supp. 502 (S.D. N.Y. 1949), and *Briggs v. Miami Window Corp.*, 158 F.Supp. 229 (M.D. Ga. 1956).

B. It is well established that a federal court is without jurisdiction to consider contempts of a state court order where disobedience of the order occurred prior to the attempted removal of the underlying cause of action to federal court. The only court with jurisdiction to consider such contempts is the state

court and this is particularly so where the contempt proceedings have been initiated prior to removal.

Kirk v. Milwaukee Dust Collector Mfg. Co.,
26 F. 501;

Contempt—Punishment by another court, 99
ALR2d 1100, 1102 (1965).

Where the contempt proceedings have been initiated in state court, the federal court should properly remand the underlying cause of action. The reason is simply that the defendants, by their actions, have taken affirmative steps to create the need for contempt proceedings in state court and have by their disobedience of the court's order placed in issue the propriety and efficacy of that order. Furthermore, it is desirable to have all proceedings in one court. Since the contempt proceedings remain in state court, it is entirely appropriate for the federal court to remand the underlying cause of action to state court. See *Kirk v. Milwaukee Dust Collector Mfg. Co.*, *supra*.

II

As will be developed below, the plaintiffs contend that the federal district court upon removal is not precluded from continuing in effect the state court injunction.

A. The defendant union's reliance on *Sinclair Refining Co. v. Atkinson*, 370 U.S. 195 (1962) and *Avco Corp. v. Aero Lodge 735*, 390 U.S. 557 (1968), in support of its motion to dissolve a preliminary injunc-

tion issued April 7, 1970, by the Superior Court of the State of California for the County of Alameda is misplaced. In *Sinclair* the employer, in an action brought in a U. S. district court under Section 301 of the Taft-Hartley Act (29 U.S.C. §185), sought injunctive relief against the union's breach of "no-strike" provisions of a collective bargaining agreement between the parties. In affirming dismissal of complaint, the Supreme Court held that a federal court is precluded, by virtue of Section 4 of the Norris-LaGuardia Act (29 U.S.C. §104), from issuing an injunction to restrain a strike over a grievance arising under the terms of a collective bargaining agreement.

In *Avco* the employer filed suit in state court to enjoin the union from striking at its plant. After the state court issued an *ex parte* injunction, the union removed the case to federal district court. The district court, denying a motion to remand to the state court, granted the union's motion to dissolve the injunction issued by the state Court. The Supreme Court held that the state court action was properly removable to a federal district court—even though the Norris-LaGuardia Act, as construed by the court in *Sinclair*, barred the federal court from issuing an injunction.

The Court in *Avco*, however, did not reach the question of the efficacy of a state court injunction after removal. The court explicitly reserved decision on the question whether a federal court upon removal is *required* to dissolve the state court injunction or

whether it has discretion to continue it in effect and enforce it:

"Another question weighed here is whether the district court, to which the action had been removed, should have dissolved the injunction issued by the Tennessee State Court. There is, of course, no question of the *power* of the district court to dissolve the injunction. Whether it did because of *Sinclair* or because of its equity powers or both is not clear. . . . *We reserve decision on those questions.*" (Emphasis added.)

Since the district court in *Avco* had dissolved the state court injunction, the Supreme Court was faced with, and decided, only the narrow question of the *power* of the district court upon removal to dissolve the injunction. Thus, the Union in the instant case, has clearly misconstrued and misapplied the *Avco* and *Sinclair* holdings. Neither case may properly be cited for the proposition that a federal district court upon removal is required to dissolve a previously issued state court injunction. Since the proceedings in *Sinclair* were brought originally in federal court, no question of the effect of removal upon the continued validity of state court injunction was presented. And in *Avco*, since the district court did dissolve the injunction, the Supreme Court had no occasion to resolve the question whether the district court is *required* to dissolve a state court injunction.

B. The Supreme Court recently granted *certiorari* in *Boys Market*, 416 F.2d 368 (9th Cir. 1969), in which the court of appeal concluded that dissolution

of a federal court injunction in a labor dispute was required by *Sinclair*. The Supreme Court would not have agreed to hear this case unless it intended to redefine the scope of *Sinclair*. This conclusion is supported by language in the concurring opinion of Justice Stuart in *Avco*:

"The court expressly reserves decision on the effect of *Sinclair* in the circumstances presented by this case. The court will, no doubt, have an opportunity to reconsider the scope and continuing validity of *Sinclair* upon an appropriate future occasion."

This language may be read to imply that, notwithstanding *Sinclair*, a federal court may continue in effect a state court injunction without violating Norris-LaGuardia. At the very least, however, the language promises a reconsideration—and not unlikely a reversal—of *Sinclair*. Pending final disposition by the Supreme Court of the question raised by *Boys Market*, federal district courts are not required by any authority to dissolve state court injunctions. The courts are free to decide the question on the basis of policy considerations they find compelling. And it is submitted that injunctive relief is needed to protect the public, to protect legitimate employer interests, and to preserve industrial peace.

C. The dominant objective of Congress in enacting Section 301 of the Taft-Hartley Act was to plug loopholes in the enforcement of collective bargaining agreements. Unions could be sued in federal courts as entities without reference to diversity of citizen-

ship or jurisdictional amount and without taking away "jurisdiction of the state courts." In 1947, Congress was concerned with a statute enacted in 1935 which had radically changed the then existing law of master and servant. The Wagner Act *compelled* employers in interstate commerce to recognize and bargain with labor unions as exclusive bargaining representatives for employees, even though such unions may have been designated by a bare majority of the employees in the appropriate bargaining unit.¹ The employer was required to "bargain in good faith" with such labor organizations as representative for all in the unit. The objective and end product of this compulsion was to be a written and signed collective bargaining agreement setting forth the wages, hours, working conditions and other terms of employment in the bargaining unit for a reasonable period of time. In *Lincoln Mills*, 353 U.S. 448, 453 (1957), the court observed that in enacting Section 301 Congress was "interested in promoting collective bargaining that ended with agreements not to strike" and in 353 U.S. at 454 quoted the Senate Report (page 16), as stating:

"If unions can break agreements with relative impunity, then such agreements do not tend to stabilize industrial relations. The execution of an agreement does not by itself promote industrial peace. The chief advantage which an employer

¹"When most parties enter into contractual relationship they do so voluntarily, in the sense that there is no real compulsion to deal with one another, as opposed to dealing with other parties. This is not true of the labor agreement." *United Steelworkers of America v. Warrior & Gulf Navigation Co.*, 363 U.S. 574, 580 (1960).

can reasonably expect from a collective labor agreement is assurance of uninterrupted operation during the term of the agreement. Without some effective method of assuring freedom from economic warfare for the term of the agreement, there is little reason why an employer would desire to sign such a contract."

To the same effect, a well-known commentator has observed that:

"... About all an employer can get in exchange for his commitments in a collective agreement is continued production—no work stoppages for the life of the agreement. Most employers assume that they don't get even this unless the union signs a no-strike pledge and promises that the union officials will take action against wild-cat strikes and work stoppages. Of course, unions say that employers get a supply of labor in exchange for their concessions in collective agreements. But employers get no more labor now than they did before unions existed. . . ."

Persons with experience in this field are well aware that an injunction, such as that issued by the Superior Court of California in the instant case, is the only "effective" method of assuring freedom from economic warfare for the term of the agreement. It has been aptly said that:

"The discharge of strike leaders does not end the strike; at best, it stops future efforts. A damage action, tried years later to the vagaries of a jury, is small recompense to the employer denied busi-

²Gregory, *The Collective Bargaining Agreement: Its Nature and Scope*, 1949 Wash. U.L.Q. 3, 12.

ness because he cannot deliver. *Equitable relief is not only the most appropriate remedy, but also the only effective one.*" (emphasis added)³

It has also been pointed out that the damage remedy is peculiarly ineffective in a strike situation, because the discipline which makes the strike possible enables the union leaders to insist on dismissal of the damage suit as a condition to ending the strike. In many cases, therefore, the damage remedy is merely a mirage.⁴ In the words of one commentator, damages are "patently a miserable substitute for performance."⁵ The recognition in *International Ass'n of Machinists v. Street* (1961) 367 U.S. 740, 773, that sometimes "[an injunction] alone can effectively guard the plaintiff's right" shows that the Court is well aware of the realities of industrial life considered above. (emphasis added).

Today, therefore, as a practical matter, only a state court, exercising traditional equity jurisdiction, can effectively stop a strike in breach of contract. If the position of the Union is sustained, the end product of the cumbersome and costly compulsory collective bargaining system erected by Congress in 1935, and reaffirmed and reenforced in 1947, will be contracts which contain a cornucopia of benefits for unions and the employees they represent, and a meaningless,

³Stewart, *No-Strike Clauses in the Federal Courts*, 59 Mich. L. Rev. 673, 675 (1961).

⁴Swigert, "Where Labor Unions Get Their Power," U.S. News & World Report, January 31, 1963, at 96, 97.

⁵Rice, *A Paradox of Our National Labor Law*, 34 Marquette L. Rev. 233, 253 (1951). See also, Rice *supra*, at 235, note 15.

practically unenforceable no-strike pledge for employers. Such a reality would expose employers to the possibility of costly disruptive pressures throughout the contract term. The resulting strikes would tend to inflate the cost of goods and services and interrupt their supply. The ultimate consumer would pay the bill. Making contract violation by unions easier than it was in 1947 cannot possibly foster the general welfare, or be in accord with Congressional intent or public policy.

We have seen, then, that the objective of Congress in enacting Section 301 was to insure the enforceability of collective bargaining agreements. As the law has developed, the bare bones of Section 301 have come to life through a series of decisions which made the private arbitration process the preferred instrument of federal labor policy as the *quid pro quo* for the no-strike agreement. Indeed, the arbitration process and effective enforcement of the no-strike agreement have operated in tandem to provide industrial peace and stability and to promote the collective bargaining process which Congress intended when it adopted Section 301. The availability of an effectively enforceable no-strike clause compels Unions to utilize the peaceful machinery of arbitration for the resolution of disputes.

The Union's petition for removal and motion to dissolve are a coldly calculated device to frustrate the equity jurisdiction of the State Court and to undermine the policy of the Federal labor laws. This Court is in a position to mitigate the potential

damage to the collective bargaining relationship by continuing in effect and enforcing the State Court injunction. Only by so doing can the goals of industrial peace, enforceability of collective bargaining agreements, and the fostering of the arbitration process be carried out.

Dated: May 21, 1970

Respectfully submitted,
Littler, Mendelson & Fastiff
By /s/ George J. Tichy, II
Attorneys for Plaintiffs

[Title omitted in printing]

**AFFIDAVIT OF GEORGE J. TICHY, II
IN SUPPORT OF MOTION TO REMAND**

State of California

City & County of San Francisco—ss.

I George J. Tichy, II, being first duly sworn, depose and say as follows:

On May 15, 1970, I notified Kenneth N. Silbert, Esq., attorney for defendants, that I would be seeking a temporary restraining order before the Honorable Lewis E. Lercara, Judge of the Superior Court, at approximately 12:00 noon on that date. I advised Mr. Silbert of the basis on which the relief was sought and advised him of the Alameda County Superior Court practice of having union attorneys present in injunctive proceedings involving labor matters. Copies of the documents were served on Mr.

Silbert shortly before the hearing before Judge Lercara. Both Mr. Silbert and I were present at this hearing and Mr. Silbert presented the viewpoint of the union that there was no breach of contract and that the Court should not grant the temporary restraining order. Despite argument by defendants' counsel, Judge Lercara granted the temporary restraining order.

Thereafter, the temporary restraining order was served on defendants as well as certain of defendant union's members. This is verified by the acknowledgment of service by defendants' counsel on the temporary restraining order and various proofs of service on file in this matter. I am informed and believe that despite knowledge of notice of the contents of the temporary restraining order, various union members and union officials continued picketing activities. As a result, contempt proceedings were initiated in state court against those persons and the union.

Furthermore, I am informed and believe that the picketing has extended to an additional plaintiff, Standard Brands, Inc. Subsequently, a modified temporary restraining order was issued in the superior court on May 18, 1970. Defendants' counsel was advised of this proceeding and presented the defendants' position to the court via telephone. I am further informed and believe that despite knowledge and notice of the modified temporary restraining order, defendant and certain of its members picketed Standard Brands, Inc. in Oakland. Subsequently, on May

19, 1970, contempt proceedings were initiated with regard to the activities at Standard Brands, Inc.

/s/ George J. Tichy, II

Subscribed and sworn to before me this 21st day of May, 1970.

(Seal)

/s/ Lonell F. Chow

Notary Public, California

My Commission expires December 15, 1972.

[Title omitted in printing]

[Filed May 22, 1970]

**AFFIDAVIT OF COUNSEL IN SUPPORT OF
APPLICATION FOR ORDER
SHORTENING TIME**

State of California

City & County of San Francisco—ss.

I, George J. Tichy, II, being first duly sworn, depose and say as follows:

I am the counsel for plaintiffs in the above-entitled matter and have represented them in all stages of this proceeding.

The complaint in this matter was originally filed on May 15, 1970, in the Superior Court for the County of Alameda. In the complaint plaintiffs Granny Goose Foods, Inc. and Sunshine Biscuits, Inc. sought injunctive relief and damages based on a breach of contract by defendant union.

On May 15, 1970, I notified Kenneth Silbert, Esq., attorney for defendants that I would be seeking a temporary restraining order before the Honorable Lewis E. Lercara, Judge of the Superior Court, at approximately 12:00 noon on that date. I advised Mr. Silbert of the basis on which the relief was sought and advised him of the Alameda County Superior Court practice of having union attorneys present in injunctive proceedings involving labor matters. Copies of the documents were served on Mr. Silbert shortly before the hearing before Judge Lercara. Both Mr. Silbert and I were present at this hearing and Mr. Silbert presented the viewpoint of the union that there was no breach of contract and that the court should not grant the temporary restraining order. Despite argument by defendants' counsel, Judge Lercara granted the temporary restraining order.

Thereafter, the temporary restraining order was served on defendants as well as certain of defendant union's members. This is verified by the acknowledgment of service by defendants' counsel of the temporary restraining order and various proofs of service on file in this matter. I am informed and believe that despite knowledge of notice of the contents of the temporary restraining order, various union members and union officials continued picketing activities. As a result, contempt proceedings were initiated in state court against those persons and the union.

Furthermore, I am informed and believe that the picketing has extended to an additional plaintiff,

Standard Brands, Inc. Consequently, a modified temporary restraining order was issued in the Superior Court on May 18, 1970. Defendants' counsel was advised of this proceeding and presented the defendants' position to the court via telephone. I am further informed and believe that despite knowledge and notice of the modified temporary restraining order, defendant and certain of its members picketed Standard Brands, Inc. in Oakland. Subsequently, on May 19, 1970, contempt proceedings were initiated with regard to the activities at Standard Brands, Inc.

It is my legal opinion, based upon the authorities which are submitted in plaintiff's Memorandum of Points and Authorities in Support of Motion to Remand and in Opposition to Motion to Dissolve Injunction, that the federal court should properly remand the underlying cause of action alleged in the complaint to the Superior Court of the State of California, for the County of Alameda. In the event that the Court does remand the matter to state court, it will be unnecessary to consider defendants' Motion to Dissolve the Injunction. It is therefore of major importance that the Motion to Remand be considered prior to or contemporaneously with the defendants' Motion to Dissolve the Injunction.

/s/ George J. Tichy, II

Subscribed and sworn to before me this 21st day of May, 1970.

(Seal)

/s/ Lonell F. Chow

Notary Public, California

My Commission expires December 15, 1972.

[Title omitted in printing]

[Filed May 22, 1970]

ORDER SHORTENING TIME

This case having come before the Court upon plaintiffs' application for an order shortening time for hearing upon their motion to remand and in opposition to motion to dissolve temporary restraining order, and good cause therefor having been shown;

Now, therefore, it is ordered that plaintiffs' application be and hereby is granted, and that said motion shall come on for hearing at 9:30 a.m. on the 22nd day of May, 1970, or as soon thereafter as counsel can be heard in the courtroom of the Honorable Gerald S. Levin, United States District Court of California, 450 Golden Gate Ave., San Francisco, California.

Dated: May 21st, 1970.

/s/ Gerald S. Levin,
United States District Judge.

[Title omitted in printing]

[Filed June 4, 1970]

ORDER DENYING MOTION TO DISSOLVE STATE COURT TEMPORARY RESTRAINING ORDER.

The controversy before the court is clearly a labor dispute within the meaning of Sec. 301 of the National Labor Relations Act, as amended 29 U.S.C. § 185. Removal is proper under 28 U.S.C. § 1441.

In the prior hearing the court denied plaintiff's motion to remand. The only issue now before the court is whether or not the District Court is mandated to dissolve the State Court temporary restraining order. The Supreme Court decision in the recent case of *The Boys Markets, Inc. v. Retail Clerk's Union, Local 770*, ... U.S. ... (June 1, 1970), is dispositive of the issue. Accordingly, It Is Ordered that the motion to dissolve the State Court temporary restraining order is Denied.

Dated: June 4, 1970.

/s/ Alfonso J. Zirpoli,
United States District Judge.

[Title omitted in printing]

[Filed December 1, 1970]

MOTION FOR CONTEMPT JUDGMENT

Plaintiffs show to the Court as follows:

1. On May 18, 1970, the Honorable Lewis E. Lercara, Judge of the Superior Court of the State of California for the County of Alameda, entered a Modified Temporary Restraining Order against defendants Brotherhood of Teamsters & Auto Truck Drivers, Local No. 70 of Alameda County, International Brotherhood of Teamsters, Chauffeurs, Warehousemen & Helpers of America, Robert Laird, James Muniz, Joseph Arenos, Louis Riga, Charles Mack, Lawrence Diaz, Edward Painter, Alex Ybarraloz, Leroy Nunes, Stanley Botello, Ronald Rocha, Art Soto, Jack

Sweeny, Richard S. Durassette, Robert Windsor, Al Leishman and Richard Saramento, and each of them, and their officers, agents, representatives, employees and members, and each and every and all other persons acting at the direction of or in concert with said defendants, enjoining them from:

a. Directing or ordering or otherwise inducing, the employees of the plaintiffs not to perform work for any of said companies;

b. Picketing at any facility or situs of equipment of the plaintiffs where the effect of such picketing is to induce, encourage or cause company employees not to work for plaintiffs;

c. Engaging in any activity for the purpose of causing or with the effect of causing, a stoppage of work for, or strike against plaintiffs;

d. Failing to withdraw any orders or directions to employees of plaintiffs that said employees should engage in a cessation of work for such companies.

2. A copy of such Modified Temporary Restraining Order has been duly served upon defendants, as more particularly appears from the Proof of Service originally filed by J. Farrell in the Superior Court for the State of California, in and for the County of Alameda, on May 21, 1970, a true and correct copy of which is attached as Exhibit A to the Affidavit of Counsel in Support of Application for an Order Shortening Time on file herein.

3. On June 4, 1970, the Honorable Alfonso J. Zirpoli, Judge of the United States District Court for

the Northern District of California, denied defendants' Motion to Dissolve the aforementioned Temporary Restraining Order, thereby continuing in effect said restraining order.

4. Defendant Brotherhood of Teamsters & Auto Truck Drivers, Local No. 70 of Alameda County, International Brotherhood of Teamsters, Warehousemen & Helpers of America, has failed and refused to comply with the provisions of the Modified Temporary Restraining Order and has disobeyed and disregarded the provisions of said restraining order as follows:

a. Defendant Brotherhood of Teamsters & Auto Truck Drivers, Local No. 70 of Alameda County, International Brotherhood of Teamsters, Warehousemen & Helpers of America, by its officers, agents and employees, has, since on or about November 30, 1970, directed and encouraged employees of plaintiffs Granny Goose Foods, Inc., Sunshine Biscuits, Inc. and Standard Brands, Inc. not to perform work for said companies.

b. Defendant Brotherhood of Teamsters & Auto Truck Drivers, Local No. 70 of Alameda County, International Brotherhood of Teamsters, Warehousemen & Helpers of America, by its officers, agents and employees, has, since on or about November 30, 1970, directed, encouraged and assisted in picketing at the facilities of Granny Goose Foods, Inc., Sunshine Biscuits, Inc. and Standard Brands, Inc. in Oakland, California, and at other locations in the San Francisco Bay Area, where the effect of such picketing

has been to induce, encourage and cause employees of said companies not to work for said companies.

c. Defendant Brotherhood of Teamsters & Auto Truck Drivers, Local No. 70 of Alameda County, International Brotherhood of Teamsters, Warehousemen & Helpers of America, by its officers, agents and employees, has, since on or about November 30, 1970, engaged in activity for the purpose of causing a stoppage of work and/or strike against Granny Goose Foods, Inc., Sunshine Biscuits, Inc. and Standard Brands, Inc.

d. Defendant Brotherhood of Teamsters & Auto Truck Drivers, Local No. 70 of Alameda County, International Brotherhood of Teamsters, Warehousemen & Helpers of America, by its officers, agents and employees, has, since on or about November 30, 1970, failed to withdraw its orders and directions to employees of Granny Goose Foods, Inc., Sunshine Biscuits, Inc. and Standard Brands, Inc. that such employees should engage in a cessation of work for such companies.

5. By reason of the failure and refusal of defendant Brotherhood of Teamsters & Auto Truck Drivers, Local No. 70 of Alameda County, International Brotherhood of Teamsters, Chauffeurs, Warehousemen & Helpers of America, to comply with the provisions of said Modified Temporary Restraining Order, plaintiffs have been damaged in the sum of \$100,000.00 per day. Such damage has been incurred as a direct result of contemnors' flagrant, illegal and paralyzing strike activities which have not only damaged the business

of Granny Goose Foods, Inc., Sunshine Biscuits, Inc. and Standard Brands, Inc. but have severely injured the public by depriving it of the goods manufactured by these companies.

6. By reason of the failure and refusal of defendant Brotherhood of Teamsters & Auto Truck Drivers, Local No. 70 of Alameda County, International Brotherhood of Teamsters, Chauffeurs, Warehousemen & Helpers of America, described in paragraph 4, above, to comply with the provisions of said Modified Temporary Restraining Order, defendant Brotherhood of Teamsters & Auto Truck Drivers, Local No. 70 of Alameda County, International Brotherhood of Teamsters, Chauffeurs, Warehousemen & Helpers of America, has committed a criminal contempt of the authority of this Court.

Wherefore, plaintiffs move the Court as follows:

1. For an order adjudging defendant Brotherhood of Teamsters & Auto Truck Drivers, Local No. 70 of Alameda County, International Brotherhood of Teamsters, Chauffeurs, Warehousemen & Helpers of America to be in civil and criminal contempt of this Court for having violated the terms of said Modified Temporary Restraining Order;

2. For an order ordering defendant Brotherhood of Teamsters & Auto Truck Drivers, Local No. 70 of Alameda County, International Brotherhood of Teamsters, Chauffeurs, Warehousemen & Helpers of America, to purge itself of said contempt by the payment to plaintiffs of full and complete damages occasioned by said contempt, together with all costs of

this proceeding, including reasonable attorneys' fees; and

3. For an order ordering defendant Brotherhood of Teamsters & Auto Truck Drivers, Local No. 70 of Alameda County, International Brotherhood of Teamsters, Chauffeurs, Warehousemen & Helpers of America, to be punished for its criminal contempt in such manner as the Court may deem just and proper.

Littler, Mendelson & Fastiff,
By /s/ George J. Tichy, II,
Attorneys for Plaintiffs.

[Title omitted in printing]

AFFIDAVIT OF WESLEY J. FASTIFF

State of California

County of San Francisco ss.

I, Wesley J. Fastiff, having first been duly sworn, depose and say:

I am an attorney licensed to practice in the State of California. I am a member of the law firm of Littler, Mendelson & Fastiff, 593 Market Street, San Francisco, California. Among the clients that we represent are the National Biscuit Company, Sunshine Biscuit Company, Standard Brands, Inc., Granny Goose Foods and Lady's Choice Foods.

On approximately November 9, 1970, I received a telegram from Teamsters Union Local No. 70 signed by Richard Sarmento, Business Agent, and A. N.

Leishman, Secretary-Treasurer, requesting a negotiating meeting for the above-named companies. Each of the above companies also received such a telegram. I am attaching a copy of this telegram as part of this Affidavit, marked Exhibit A.

On November 11, 1970, I responded to that telegram on behalf of the above-named companies declining the Union's request to engage in collective bargaining negotiations because of our contention that a contract is presently in full force and effect. A copy of my letter dated November 11, 1970 is attached to this Affidavit, marked Exhibit B.

On November 17, 1970, I received a letter from Duane B. Beeson, Esq., attorney for Teamsters Union Local No. 70 (which letter was dated November 13, 1970). Mr. Beeson's letter set forth the Union's demand that the companies bargain with the Union, notwithstanding the fact that the National Labor Relations Board has issued a complaint against the Union because of its attempt to force the companies to negotiate a new contract at a time when a labor agreement is in full force and effect between the parties. Mr. Beeson's letter further stated that Local 70 was of the opinion that the Modified Restraining Order obtained from the Alameda Superior Court on May 18, 1970 and removed to the Federal District Court was no longer in effect. Mr. Beeson's letter of November 13, 1970 is attached to this Affidavit, marked Exhibit C.

On November 20, 1970, I responded to Mr. Beeson's letter stating the companies' position that the com-

panies and Local 70 were bound by a National Master Freight Agreement and a Joint Council Seven Supplemental Agreement and that, therefore, it would not be proper for the companies to meet with Local 70 to negotiate separate individual contracts. I further stated the company's position with regard to the Modified Temporary Restraining Order and I quoted Judge Zirpoli's comments to the effect that the Order was in effect until set aside. A copy of my letter dated November 20, 1970 is attached to this Affidavit, marked Exhibit C.

On December 1, 1970, at approximately 11:00 a.m., I sent a telegram to Mr. Beeson and to Teamsters Local 70 stating that the Modified Temporary Restraining Order was presently in effect and that the Companies intended to move for a contempt judgment against Teamsters Local 70 at 10:30 a.m., December 2, 1970, before the Honorable Alfonso J. Zirpoli, Judge of the United States Federal District Court. A copy of this telegram is attached as Appendix D.

I have carefully read this Affidavit consisting of this and two other pages, and I certify that it is true and correct to the best of my knowledge and belief.

/s/ Wesley J. Fastiff.

Subscribed and sworn to before me this 1st day of December, 1970.

(Seal)

/s/ Nina M. Drake,
Notary Public—California

My Commission Expires July 8, 1973.

Exhibit A**Western Union Telegram****SFA055 (24)LD293****1970 NOV 9 PM 3:35****L OLE 116 WU PDB 2 EXTRA FAX OAKLAND CALIF 9 226P PST****WESLEY FASTIFF LITTLER MENDELSON SALTZMAN****593 MARKET ST SFRAN**

**REQUESTING NEGOTIATING MEETING BE SCHEDULED FOR
 NOVEMBER 17, 1970 10:00 A.M., ROYALL INN, HEGENBER-
 GER ROAD, OAKLAND, FOR PURPOSE OF NEGOTIATING NEW
 AGREEMENT, WHICH EXPIRED 4-1-70.**

PLEASE CONFIRM WITH UNDERSIGNED**RICHARD SARMENTO BUSINESS AGENT A N LEISHMAN****SECRETARY-TREASURER,****593 17 1970 10:00 4-1-70.****(246)****Exhibit B****November 11, 1970****Mr. A. N. Leishman****Secretary-Treasurer****Brotherhood of Teamsters and****Auto Truck Drivers****Local No. 70 of Alameda County****70 Hegenberger Road****Oakland, California 94621**

**Re: Granny Goose Foods, Lady's
 Choice Foods, National Biscuit
 Company, Standard Brands, Inc.
 and Sunshine Biscuit Company**

Dear Mr. Leishman:

**This letter is in response to the telegram which
 you sent to me and to the above-named companies on
 or about November 9, 1970.**

On behalf of such companies, I respectfully decline your request to meet on November 17, 1970. I am sure that you are aware that the position of the above companies is that they are covered by a collective bargaining agreement to which you are a party. The agreement is binding on both your Union and the companies.

Furthermore, the National Labor Relations Board has recently issued a formal unfair labor practice complaint against Local 70 setting forth the position of the NLRB in this matter.

Under these circumstances, meetings with regard to contract negotiations prior to a final determination by the National Labor Relations Board would be improper.

If you have any questions, please do not hesitate to contact me.

Very truly yours,
Wesley J. Fastiff

WJF:mh

cc: Mr. Richard Sarmento

Exhibit C

(Letterhead of
Brundage, Neyhart, Grodin & Beeson
Attorneys at Law

100 Bush Street, Suite 2600
San Francisco, California 94104
(415) 986-4060

Oakland Office
1330 Broadway
(415) 452-2888)

November 13, 1970

Wesley Fastiff, Esq.
Littler, Mendelson & Fastiff
593 Market Street
San Francisco, California

Re: Granny Goose - Teamsters
Local 70 litigation

Dear Mr. Fastiff:

This letter is prompted by our brief conversation a few days ago in which you inquired as to Local 70's purpose in asking for a negotiating meeting in the above referenced situation.

I have discussed the matter with Dick Sarmento, the business representative for Local 70 who is handling the matter, and have reviewed the files of the pending proceedings involving the parties. In order to avoid any misunderstanding, I thought it might be helpful to let you know my present thinking, which also reflects Local 70's present position.

The unfair labor practice complaint which has been issued does not in my opinion present an "open and

shut case." I feel there are very substantial defenses which can be advanced to show that Local 70 properly and validly extricated itself from any bargaining relationship with the employer which bound these parties to the National Master Freight negotiations. In these circumstances, Local 70 does not feel it is morally or legally bound to wait the outcome of the Labor Board proceeding to press its position that a separate contract should be negotiated.

With respect to the Section 301 action which was originally filed in the Alameda County Superior Court and removed to the federal district court, I do not understand from the file that there is presently in effect any order which forbids Local 70 from bargaining with the employer, or from pressing its position that it has a right to bargain for a separate contract. A motion to dissolve a temporary restraining order against economic action was denied by the federal court, but that temporary restraining order has long since become ineffective by virtue of the statutory limitation on its duration, and there has been no application for a preliminary injunction.

Accordingly, the federal court case is pending, but there are no outstanding orders which affect the assertion by Local 70 of rights which it claims. I am content to allow the federal court action to lie dormant, in view of the activity in the Labor Board case. If you are inclined to press the federal court case, Local 70 would urge, among other things, that the identical issue is going to hearing before the Labor Board, and the federal court should defer.

I don't know whether there are any conclusions to be drawn from the foregoing analysis, but I would appreciate hearing from you if you feel any of my assumptions or information are wrong. In the meantime, Local 70 seriously wants to meet with the employer and insists that it has the right to negotiate a contract which differs from the National Master Freight agreement. I am hopeful you will advise your client to enter into negotiations. If not, Local 70 feels that it has every right to press its position.

Very truly yours,

/s/ Duane B. Beeson

DBB:cdv

cc: Mr. Richard Sarmento

Exhibit D**Western Union Telegram****Charge to the Account of 51-2899****12/1/70**

Send the following message, subject to the terms on back hereof, which are hereby agreed to

Report Delivery On Both Telegrams

Brundage, Neyhart, Grodin & Beeson

Attn: Duane Beeson, Esq. & Kenneth Silbert, Esq.

100 Bush Street

San Francisco, California

Teamsters Local 70

Attn: James Muniz, Pres. &

A. N. Leishman, Secty.-Treas.

70 Hegenberger Road

Oakland, California

**Re: Granny Goose Foods; Sunshine
Biscuits; Standard Brands**

As you are aware, there is presently in effect a temporary restraining order issued by the Honorable Lewis E. Lercara, Judge of the Alameda County Superior Court, which enjoins picketing and other activity for the purpose of causing or with the effect of causing a work stoppage or strike against the above companies. Despite the existence of that restraining order, members of Teamsters Local 70 have engaged in picketing and strike activity directed against those companies. Consequently, these companies intend to move for a contempt judgment against Teamsters Local 70 at 10:30 A.M. tomorrow, December 2, 1970 before the Honorable Alfonso J. Zirpoli, Judge of the

United States District Court, Federal Building, San Francisco.

Wesley J. Fastiff

Of Littler, Mendelson & Fastiff

[Title omitted in printing]

AFFIDAVIT OF DEL RANCHE

State of California

County of San Francisco ss.

I, Del Ranche, having first been duly sworn, depose and say:

I am Western Regional Distribution Manager of Standard Brands, Inc. The Company has a plant in Oakland, California, 921 98th Avenue.

On November 9, 1970, I received a telegram from Richard Saramento, Business Agent, and A. N. Leishman, Secretary-Treasurer of Local No. 70 of the Teamsters, a true and correct copy of which is attached hereto and incorporated herein by reference as though fully set forth. With respect to this telegram, I contacted our attorney, Wesley J. Fastiff, who is handling this matter. He advised me that he would respond to this telegram on behalf of our company.

The Oakland plant is located on a plot of land approximately $8\frac{1}{2}$ acres, $\frac{3}{4}$ of which is covered by our production facility and is located directly across the street from Granny Goose, Inc. At this plant, the Company is engaged in the processing of yeast, margarine and vinegar for distribution to our various wholesale customers.

At the Oakland plant we employ approximately 230 employees in the following classifications: Approximately 16 supervisory and management employees; approximately five laboratory and warehouse employees; approximately 20 maintenance employees and approximately 6 truck drivers who make local deliveries in the area and sometimes make deliveries in Fresno and Sacramento. These drivers are represented by Teamsters Local 70. Local 70 does not represent any other classification of our employees.

There are four entrance gates to our Oakland facility but three of these are locked at all times. The only one presently being used is off 98th Avenue. At approximately 6:20 A.M. Monday morning the plant manager at the Oakland facility called me at my home and advised me that pickets were in front of the Oakland plant. I arrived at the plant around 7:45 A.M. and observed seven or eight pickets on 98th Avenue at the entrance to our plant. Three of these pickets carried signs. Of these three pickets, I recognized two of these as Company drivers. The signs were about one foot by one and one-half feet and contained the words "Teamsters Local 70 on Strike".

Between the words "Local 70" and "On Strike" were written in crayon the words "Standard Brands". Our production and warehouse employees, maintenance employees and drivers did not cross the picket line and consequently did not work today.

Standard Brands, Inc. manufactures and sells bakers yeast to bakeries located in four Western States and manufactures and sells margarine to retailers

located in thirteen Western States. We manufacture and sell vinegar to processors located in California and Arizona. At present we have six trucks loaded at the plant, three of them are loaded with yeast and three with margarine. The yeast is under refrigeration in the trucks but I would estimate that it would be good for only another 24 hours. The margarine, which is loaded in our other three trucks, has an effective shelf life of about six weeks. I would estimate that for every day of the strike that we are unable to manufacture and deliver our products our Company is losing \$104,000 gross revenue. In addition to the above, we have Government contracts for the delivery of dry yeast to Saipan and Vietnam. These contracts call for us to deliver approximately 40,000 pounds of dry yeast a month. I do not know the value of these contracts. I would also like to state that in order to produce vinegar a certain type of bacteria, known as aceta bacteria, is a necessary ingredient. Any interruption in the vinegar making process will result in killing the bacteria which could take up to 18 months to again get back into full production because it takes that long for the bacteria to again become active. Our Company manufactures about five million gallons of vinegar per year.

In addition to the loss in gross revenues due to lost sales, the Company also faces the prospect of lost business that may not ever return upon cessation of the strike. The food industry is extremely competitive and the critical factor in having a successful business is to obtain an optimum amount of display space in the retail outlet. The average retail outlet does not

stock all competing brands of foods nor does it give equal display space to the brands that it does stock. If we are unable to supply our products to our retail outlets for any period of time, the retail outlets will be forced to change suppliers and give our display space to another supplier. It has taken many years of promotional and sales efforts to obtain our present amount of display space in the retail outlets and if a retail outlet switches, even temporarily, to another supplier, the chance of regaining that business is very slim. We are the only producer of margarine in this area that is being picketed by Local 70 and our many competitors will be eager and happy to take our shelf space that we have worked so long and hard to develop.

Due to the long years of promotional and sales efforts and the competitiveness of the market, a loss of such display space due to the current picketing would make an assessment of monetary damages extremely difficult and would constitute an incalculable loss in good will.

On Tuesday, December 1, 1970, at approximately 11:45 A.M., I personally approached three picketers who were picketing the main entrance to our plant on 98th Avenue in Oakland, California. The three picketers were Ray Matthews, Don Chrissman and Jack Loughlin. Each of them are employees of Standard Brands and are members of Teamsters Local 70. I had with me copies of the Modified Temporary Restraining Order and Order To Show Cause issued on May 18, 1970, by the Superior Court for the County of Alameda which prohibited Local 70 and

its members and agents from picketing our facilities. I informed the three picketers of the Order and I read to them paragraphs (b) and (c) of the Order. I handed them a copy of the Order and asked them to accept it and they responded "We have been instructed not to accept anything." I then told them "I have read it to you and since you will not take it, I will drop it here for you."

I certify that the above is true and correct.

/s/ Del Rancho

Subscribed and sworn to before me this 1st day of December, 1970.

(Seal)

Nina M. Drake

Notary Public—California

My Commission Expires

July 8, 1973

BD+

SUNSHINE OAK

49P PST NOV 9 70 LB294

L OLE112 WU PDB 2 EXTRA FAX OAKLAND CALIF 9 NPT

SUNSHINE BISCUITS INC

851 21ST AVE OAKLAND CALIF

REQUESTING NEGOTIATING MEETING BE SCHEDULED FOR NOVEMBER 17, 1970, 10:00 A.M., ROYALL INN, HEGENBERGER ROAD, OAKLAND, FOR PURPOSE OF NEGOTIATING NEW AGREEMENT, WHICH EXPIRED 4-1-70. PLEASE CONFIRM WITH UNDERSIGNED

RICHARD SARMENTO, BUSINESS AGENT A N LEISHMAN
SECRETARY-TREASURER.

851 81 17 1970 10:00 4-1-70.

(239)

[Title omitted in printing]

AFFIDAVIT OF WM. C. DREHER

State of California

County of San Francisco—ss.

I, Wm. C. Dreher, having first been duly sworn, depose and say:

I am Plant Manager of the Sunshine Biscuits, Inc., plant in Oakland, California, located at 851 81st Avenue, telephone 638-4600. I have held this position for five months. As Plant Manager I am in charge of the general overall operations of the Oakland plant.

On November 9, 1970, I received a telegram from Richard Saramento, Business Agent, and A. N. Leishman, Secretary-Treasurer, of Local No. 70 of the Teamsters, a true and correct copy of which is attached hereto and incorporated herein by reference as though fully set forth. With respect to this telegram, I contacted our attorney, Wesley J. Fastiff, who is handling this matter. He advised me that he would respond to this telegram on behalf of our company.

Sunshine Biscuits, Inc. is engaged in the processing, distribution and wholesale sale of bakery products. The Oakland plant manufactures bakery products for distribution to customers in the thirteen Western States, including the states of Hawaii and Alaska.

The Oakland plant is located on an eleven acre site in a single multi-story building which has 880,000 square feet of manufacturing and storage space. There are approximately 700 individuals employed at the plant, who may be classified as follows: approximately

30 management officials, approximately 625 production and warehouse employees, including approximately 35 sanitation employees; approximately 30 maintenance employees, approximately 30 office clerical employees; and approximately 15 truck drivers and dock helpers. The truck drivers and dock helpers are all represented by Teamsters Local 70. Those are the only employees represented by Local 70.

The Oakland plant, which operates on a 24-hour per day basis, may be reached by four separate entrances. One entrance leads directly to our office and is opened to the street. The second entrance is used solely for the receipt of raw materials. The third entrance is used solely for the shipment of our manufactured products. The fourth entrance is used solely by employees and is adjacent to a parking area where employees park their cars.

At approximately 6:00 A.M., November 30, 1970, I arrived at the Oakland plant and observed pickets at the shipping and receiving entrances to our premises. There were no pickets at the employee entrance or at the entrance that leads directly to the office. I have been informed and believe that the pickets had been stationed at the shipping and receiving entrances since approximately 11:00 P.M. November 29. I observed two pickets at the shipping entrance and two or three at the receiving entrance. Of these four or five pickets, I recognized at least two of them as Sunshine Biscuit employees, who are members of Teamsters Local No. 70. All of the pickets carried signs which read as follows: "Teamsters Local 70 on

Strike". Between the words "Local 70" and "On Strike" was written "Sunshine Biscuits". The signs were approximately a foot and a half by two feet in dimension. The words "Teamsters Local 70 on Strike" were printed and the lettering was approximately four inches in height. The words "Sunshine Biscuits" were handwritten in between the words "Local 70" and "On Strike".

On November 30 the only employees who had observed the picket line had been our drivers and dock helpers, all of whom are members of Teamsters Local 70. Additionally, we have had shipments of materials which were scheduled to be delivered to the Oakland plant which have not been delivered because drivers of the trucks carrying these materials have refused to cross the picket line.

Since our drivers and dock helpers have been on strike, none of our manufactured products have been shipped from our premises by truck. Normally, approximately 80% of our processed products are shipped by truck from our plant and the other 20% are shipped by rail. Rail delivery is generally unavailable to the Company for the primary reason that our customers would not be able to receive our products by rail or cannot do so economically.

Our Company manufactures biscuits and cookies which have a relatively short shelf life. -As a result of large scale manufacturing, we have certain products at our facility which have been held for nearly the limit of preshipment time allowed. If these items are not delivered to our customers soon, there may

be spoilage or the product may have such a short remaining life to make their delivery impossible.

If the strike continues and the pickets remain at the shipping and receiving entrances to our premises, I estimate that our loss of revenues will be approximately \$200,000 per day. This is the value of manufactured products which we would ship daily from our Oakland facility to our customers. Of this \$200,000 figure, approximately \$15,000 would be derived from payments for our export of cookies and crackers to military commissaries located throughout the Pacific Far East area. In addition, we have a special order for approximately \$50,000 worth of canned cookie items destined for military installations in the Pacific Far East later this week which we are unable to ship as long as the pickets remain at the shipping gate. In addition, there are several shipments of specialized food items for Christmas ready for immediate delivery. If these items are not shipped immediately, such sales shall be irretrievably lost to the Company and such products may similarly prove valueless.

In addition to the loss in gross revenues due to lost sales, the Company also faces the prospect of lost business that may not ever return upon cessation of the strike. The food industry is extremely competitive and the critical factor in having a successful business is to obtain an optimum amount of display space in the retail outlet. The average retail outlet does not stock all competing brands of foods nor does it give equal display space to the brands that it does stock.

If we are unable to supply our products to our retail outlets for any period of time, the retail outlets will be forced to change suppliers and give our display space to another supplier. It has taken many years of promotional and sales efforts to obtain our present amount of display space in the retail outlets and if a retail outlet switches, even temporarily, to another supplier, the chance of regaining that business is very slim.

Due to the long years of promotional and sales efforts and the competitiveness of the market, a loss of such display space due to the current picketing would make an assesement of monetary damages extremely difficult and would constitute an incalculable loss in good will.

On Tuesday, December 1, 1970, at approximately 1:40 P.M., I approached two pickets who were sitting in a car which was parked at the entrance to our plant which is used by trucks coming in and out of the plant. There was a picket sign posted on the car as well as on the gate nearby. It was raining at the time and the car with the picket signs was the only evidence of picketing. I went up to the car and I recognized one of the pickets as Ross Edwards, an employee of the Company and a member of Local 70. Edwards rolled his window down. I told him and the other person that there was a Temporary Restraining Order outstanding that prohibited picketing. I told him there were some specific points he should know about and I read the language from the Order from paragraphs (a), (b), (c) and (d) on

page two of the Order. I also read to him that portion of the last page which stated that the Order applied not only to the Union, but to its agents, representatives, employees and members. I then told them that they were in contempt of the Order as individuals. I then handed the modified Temporary Restraining Order to Edwards and he took it and I left.

I have carefully read this Affidavit consisting of six pages, including this page, and I certify that it is true and correct to the best of my knowledge and belief.

/s/ Wm. C. Dreher

Subscribed and sworn to before me this 1st day of December, 1970.

(Seal)

Nina M. Drake

Notary Public—California

My commission expires July 8, 1973

BD+

SUNSHINE OAK

49P PST NOV 9 70 LB294

L OLE112 WU PDB 2 EXTRA FAX OAKLAND CALIF 9 NPT

SUNSHINE BISCUITS INC

851 21ST AVE OAKLAND CALIF

REQUESTING NEGOTIATING MEETING BE SCHEDULED FOR NOVEMBER 17, 1970, 10:00 A.M., ROYALL INN, HEGENBERGER ROAD, OAKLAND, FOR PURPOSE OF NEGOTIATING NEW AGREEMENT, WHICH EXPIRED 4-1-70. PLEASE CONFIRM WITH UNDERSIGNED

RICHARD SARMENTO, BUSINESS AGENT A N. LEISHMAN
SECRETARY-TREASURER.

851 81 17 1970 10:00 4-1-70.

(239)

[Title omitted in printing]

AFFIDAVIT OF ROBERT B. CRALL

State of California

County of San Francisco—ss.

I, Robert B. Crall, having been first duly sworn, depose and say:

I am Director of Industrial Relations of Granny Goose Foods. I have held this position for one and one-half years. During said time I have been at the corporate headquarters in Oakland, California. I am in charge of Industrial Relations for Granny Goose Foods facilities which are located in the States of

California and Hawaii. The corporate headquarters are located at 930 98th Avenue, Oakland, California, telephone 635-5400. Granny Goose Foods is engaged in the processing, distribution and wholesale sale of potato chips and other food products.

On November 9, 1970, I received a telegram from Richard Saramento, Business Agent, and A. N. Leishman, Secretary-Treasurer, of Local No. 70 of the Teamsters, a true and correct copy of which is attached hereto as Exhibit A and incorporated herein by reference as though fully set forth. With respect to this telegram, I contacted our attorney, Wesley J. Fastiff, who is handling this matter. He advised me that he would respond to this telegram on behalf of our company.

Adjacent to our corporate headquarters at 930 - 98th Avenue, Oakland, California, is a production facility which covers approximately one city block. At the production facility we employ approximately 225 production and maintenance workers, 15 warehouse employees, 7 driver salesmen, 5 office clerical employees, 6 managerial employees, and 16 drivers. Of the 16 drivers, 11 make local deliveries and work on the dock loading the trucks. These 11 drivers are represented by Teamsters Local 70. They are the only employees at the Oakland facility represented by Local 70. We employ five long-haul drivers who also work out of the Oakland facility.

There are three entrances to the production facility at the Oakland plant. One entrance, off 98th Avenue, is the entrance for our employee use. This entrance

leads to the front of the premises. Another entrance, off 98th Avenue, is the entrance that our driver salesmen use and is also the entrance that drivers who deliver bulk oil for our plant use. The third entrance, off Merced Street, which is reached by coming in from 98th Avenue, leads to the rear entry of the premises. This entrance is where we receive the raw materials for our products and where our manufactured products are shipped from.

Monday morning, at approximately 6:30 a.m., I received a telephone call from my plant manager advising me that Teamsters Local 70 was picketing the Oakland facility. I arrived at the premises at approximately 8:15 a.m. I observed five pickets who were walking up and down 98th Avenue in front of our premises. In addition, I observed some pickets across the street who were picketing Standard Brands, Inc. Four of the five pickets were carrying signs, approximately 1½ to 2 feet in dimension with the words "Teamsters Local 70 On Strike" printed on them. Between the words "Teamsters Local 70" and "On Strike" on the picket sign were written in the words "Granny Goose".

The fifth individual picketing on the 98th Avenue premises placed his picket sign on the bumper of an automobile which was parked on 98th Avenue. The sign had the same wording as the other pickets. I recognized one of the pickets as being one of the Granny Goose local delivery drivers.

None of our dock workers and local delivery drivers, long-haul drivers, warehouse employees, produc-

tion and maintenance employees and driver salesmen had crossed the picket line to report for work.

At around 9:30 a.m. Monday morning our Oakland Sales Manager advised me that our warehouses in El Cerrito and Newark, California were being picketed by Teamsters Local 70 and that only one of the trucks had left these premises to make delivery of our products, and that this sales truck left said premises prior to the time Local 70 placed its pickets around the premises. We have approximately five or six driver salesmen who deliver products from our Newark warehouse. Approximately 12 to 15 driver salesmen deliver products out of our El Cerrito warehouse.

Granny Goose Foods manufactures potato chips and general snack foods, including corn products and nuts. All of the above items are perishable. I would estimate that the potato chip products have a shelf life of approximately five weeks. We generally make delivery of these products within a week and one-half after they are manufactured and packaged. I would estimate that the nuts have a shelf life of approximately two months and the corn products a shelf life of approximately seven weeks. In addition to the above, we distribute various meat products, including polish sausages, hot sticks and beef jerky. I do not know the shelf life of these products, but I would estimate that it is very short.

Earlier Monday, we received a load of potatoes. These potatoes were delivered and remained on the truck without a tarp, ready for our production workers to unload and process this morning. Nothing has

been done with respect to these potatoes as yet. Within a short time, and maybe within a day, these potatoes will be valueless to us. I am unable to estimate the value of that shipment of potatoes.

I would estimate that our Company is losing approximately \$100,000 gross revenue per day because of sales lost, due to our inability to make delivery of our products. We now have \$150,000 of raw materials and finished goods at our warehouse. If something is not done with respect to these products, within a short time they will be of no value to the Company. Approximately 20% of the Company's sales consists of products which are distributed to the United States Military. A substantial portion of this is shipped directly to military bases in the Far East through one of the Company's brokers.

The effect of today's strike is that our Company did not make any deliveries to retailers in El Cerrito and Alameda Counties today. If the strike continues, we will be unable to make deliveries throughout Northern California in the future.

December has traditionally been our best sales volume month of the year. The week between Christmas and New Year's Eve is particularly busy for us and is the highest sales volume week of the year.

In addition to the loss in gross revenues due to lost sales, the Company also faces the prospect of lost business that may not ever return upon cessation of the strike. The snack food industry is extremely competitive and a critical factor in having a successful business is to obtain an optimum amount of

display space in the retail outlet. The average retail outlet does not stock all competing brands of snack foods nor does it give equal display space to the brands that it does stock. If we are unable to supply our products to our retail outlets for any period of time, the retail outlets will be forced to change suppliers and give our display space to another supplier. It has taken many years of promotional and sales efforts to obtain our present amount of display space in the retail outlets and if a retail outlet switches, even temporarily, to another supplier, the chance of regaining that business is very slim. At the present time all of our competitors are operating. We are the only snack food company which is being picketed by Local 70.

Due to the long years of promotional and sales efforts and the competitiveness of the market, a loss of such display space due to the current picketing would make an assessment of monetary damages extremely difficult and would constitute an incalculable loss in good will.

On Tuesday, December 1, 1970, at approximately 11:15 a.m., I approached the Merced Street entrance to our plant where a car was parked in the driveway entrance. There were two Local 70 picket signs placed in the car and Thomas Pitts was standing next to the car. Thomas Pitts is an employee of the Company and is a member of Local 70. I gave him a copy of the Modified Temporary Restraining Order and Order to Show Cause issued by the Superior Court for the County of Alameda on May 18, 1970 in Case No.

400637 and explained to him that it was still in force and effect and that it prohibited him from picketing. He said thank you and took it and went and sat inside his car and read it. After reading the papers he remained in his car and did not leave.

There was another picketer walking up and down the sidewalk whom I did not recognize. I walked up to him and handed him a copy of the Modified Temporary Restraining Order but he refused to take it.

I have carefully read this affidavit, consisting of six pages, including this page, and I certify that the information is true and correct to the best of my knowledge and belief. Dated: December 1, 1970

/s/ Robert B. Crall

Subscribed and sworn to before me this 1st day of December, 1970.

(Seal)

/s/ Nina M. Drake

Notary Public—California

My commission expires July 8, 1973

BD+

SUNSHINE OAK

49P PST NOV 9 70 LB294

L OLE112 WU PDB 2 EXTRA FAX OAKLAND CALIF 9 NPT

SUNSHINE BISCUITS INC

851 21ST AVE OAKLAND CALIF

REQUESTING NEGOTIATING MEETING BE SCHEDULED FOR NOVEMBER 17, 1970, 10:00 A.M., ROYALL INN, HEGENBERGER ROAD, OAKLAND, FOR PURPOSE OF NEGOTIATING NEW AGREEMENT, WHICH EXPIRED 4-1-70. PLEASE CONFIRM WITH UNDERSIGNED

RICHARD SARMENTO, BUSINESS AGENT A N LEISHMAN
SECRETARY-TREASURER.

851 81 17 1970 10:00 4-1-70.

(239)

[Title omitted in printing]

AFFIDAVIT OF COUNSEL IN SUPPORT OF APPLICATION FOR ORDER SHORTENING TIME

State of California

County of San Francisco—ss.

I, George J. Tichy II, being-first duly sworn depose and say as follows:

I am an attorney for plaintiffs in the above entitled matter and have represented them in the various proceedings herein.

On May 18, 1970, the Honorable Lewis E. Lercara, Judge of the Superior Court for the County of Alameda, State of California issued a Modified Temporary Restraining Order against defendant Brother-

hood of Teamsters & Auto Truck Drivers, Local No. 70 of Alameda County, International Brotherhood of Teamsters and the other defendants enjoining said defendants from engaging in picketing at any facilities or situs of equipment of plaintiffs where the effect of such pickets is to induce, encourage or cause employees of plaintiffs not to work for plaintiffs.

A copy of the Modified Temporary Restraining Order has been duly served on defendants, as appears from the Proof of Service filed by J. Farrell in Superior Court of the State of California, in and for the County of Alameda, on May 21, 1970, a true and correct copy of which is attached hereto as Exhibit A and incorporated herein by reference.

On June 4, 1970, the Honorable Alfonso J. Zirpoli, Judge of the United States District Court, denied defendants' Motion to Dissolve said Modified Temporary Restraining Order, thereby continuing said Modified Temporary Restraining Order in full force and effect.

I am informed and believe that since on or about November 30, 1970, defendant Brotherhood of Teamsters & Auto Truck Drivers, Local No. 70 of Alameda County, International Brotherhood of Teamsters, has directed, induced and encouraged a cessation of work by picketing at the premises of Granny Goose Foods, Inc., Sunshine Biscuits, Inc. and Standard Brands, Inc. in Oakland, California, and at other locations in the San Francisco Bay Area.

The aforementioned picketing, which has had the effect of causing a work stoppage and strike at said

companies by their employees, is in direct violation of the terms of the Modified Temporary Restraining Order issued by the Honorable Lewis E. Lercara on May 18, 1970, and left in effect by the order of the Honorable Alfonso J. Zirpoli on June 4, 1970, denying defendants' Motion to Dissolve said Modified Temporary Restraining Order. I am informed and believe that such picketing and work stoppage will cause immediate, grave and irreparable damage to plaintiffs and the customers of plaintiffs. I am further informed and believe that said irreparable harm will continue until defendant is compelled to obey the terms of the Modified Temporary Restraining Order issued on May 18, 1970.

It presently appears that the only means possible of compelling defendants to comply with the terms of the Modified Temporary Restraining Order is for this Court to assert its contempt power to compel such compliance under pain of monetary fine or imprisonment. It is, therefore, imperative that this Court issue an Order shortening time for the hearing upon plaintiff's Motion for Contempt Judgment in order to avoid irreparable harm to plaintiffs and to insure proper enforcement and prevention of further violations of the Modified Temporary Restraining Order.

/s/ George J. Tichy, II

Subscribed and sworn to before me this 1st day of December, 1970.

(Seal)

Nina M. Drake

Notary Public—California

My commission expires July 8, 1973

[Title omitted in printing]

[Filed Dec. 1, 1970]

ORDER SHORTENING TIME

This case having come before the Court upon plaintiffs' application for an Order Shortening Time for hearing upon plaintiffs' Motion for Contempt Judgment, and good cause therefor having been shown;

Now, Therefore, It Is Ordered that plaintiffs' application be and hereby is granted, and that said motion shall come on for hearing at 10:30 A.M. on the 2nd day of December, 1970, or as soon thereafter as counsel can be heard, in the courtroom of the Honorable Alfonso J. Zirpoli, United States District Court for the Northern District of California, 450 Golden Gate Avenue, San Francisco, California.

Dated: December 1, 1970.

/s/ Alfonso J. Zirpoli
United States District Judge

[Title omitted in printing]

[Filed Dec. 2, 1970]

MEMORANDUM OF POINTS AND AUTHORITIES IN SUPPORT OF ORDER OF CONTEMPT

I

An order of contempt is proper upon the violation of a lawful injunctive order.

18 U.S.C.A. Section 401 (3);

Siebring v. Hansen, 346 F.2d 474 (8th Circuit, 1965);

In re Chiles, 89 U.S. 157 (1875).

II

Where, as here, a lawful injunctive order was issued by a state court prior to removal of the underlying action to United States District Court, the injunctive order remains in full force and effect until dissolved or modified by the District Court.

28 U.S.C. Section 1450;

State v. Fuller, 296 N.Y.S.2d 37, 39, (1968).

In this regard, 28 U.S.C. Section 1450 provides in relevant part as follows:

"All injunctions, orders, and other proceedings had in such action prior to its removal shall remain in full force and effect until dissolved or modified by the district court." (Emphasis supplied.)

III

Upon removal of a cause from state court to United States District Court, the federal court is not bound by any alleged rule of state practice which is in conflict with a federal statute.

Munsey v. Testworth Laboratories, 227 F.2d 903 (6th Cir. 1955);

Savell v. Southern Ry. Co., 93 F.2d 377, 379 (5th Cir. 1937).

IV

Actual knowledge or notice of the order is sufficient to charge the violator with contempt. Such

knowledge or notice of the order may result either from service of process or otherwise.

Pettibone v. United States, 148 U.S. 197 (1893);

Denver-Greeley Valley Water Users Assn. v. McNeil, 131 F.2d 67 (10th Circuit, 1942);

International Brotherhood of Teamsters, Chauffeurs, Warehousemen & Helpers of America v. United States, 275 F.2d 610 (4th Circuit, 1960), cert. den. 362 U.S. 975.

V

To establish a civil contempt of the Court's order, it is not necessary to show that the disobedience to the order was willful.

Stateler v. California National Bank, 77 F. 43 (CC, ND Cal. 1896);

Water Co. v. American Strawboard Co., 75 F. 972 (CC, D. Ind 1896).

VI

Upon a finding of contempt, the Court may, in its discretion, punish by fine or imprisonment such contempt of its authority.

18 U.S.C. Section 401.

VII

United States District Court may require civil contemnors to pay specific sum, not as sanction to assure

further compliance but as compensation to or offset of damages of adversary because of past dereliction.

Folk v. Wallace Business Forms, Inc., 394 F.2d 240 (4th Circuit, 1968).

VIII

Upon a finding of criminal contempt, the trial judge has much discretion in the imposition of fines and may take into consideration the extent of willful and deliberate defiance of the Court's order, the seriousness of the consequences of the contumacious behavior, the necessity of effectively terminating the defiance of the order and the importance of deterring future acts.

United States v. United Mine Workers of America, 340 U.S. 258, 303 (1946).

IX

Successive and separate contempts are punishable as separate offenses.

Bullock v. United States, 265 F.2d 683 (6th Circuit, 1959), cert den. 360 U.S. 909.

Littler, Mendelson & Fastiff
By /s/ George J. Tichy, II
Attorneys for Plaintiffs

In the United States District Court
Northern District of California
No. C 70 1057

Before: Hon. Alfonso J. Zirpoli, Judge

Granny Goose Foods, Inc., et al,
Plaintiffs,

vs.

Brotherhood of Teamsters & Auto
Truck Drivers, Local No. 70 of Alameda County, et al.,
Defendants.

[Filed Dec. 2, 1970]

Appearances:

For Plaintiffs: George J. Tichy, II, Esq.
Wesley J. Fastiff, Esq.
J. Richard Thesing, Esq.

For Defendants: Duane B. Beeson, Esq.
Kenneth N. Silbert, Esq.

REPORTER'S TRANSCRIPT

December 2, 1970

Wednesday

*Findings of Fact and Conclusions of Law and
Order and Judgment of Criminal Contempt*

I hereby certify that the annexed instrument is a true and correct copy of the original on file in my office.

ATTEST:

C. C. Evensen,
Clerk, U. S. District Court
Northern District of California
By /s/ Edward C. Sorenson
Deputy Clerk

Dated Dec. 2, 1970

December 2, 1970—Wednesday

[Reporter's partial transcript.]

The Court: All right, then, considering the nature of the case, the urgency involved, the case is submitted and I am going to make a ruling now.

To be specific and dispel any suspense, it's obvious to me that the Defendant Union is in contempt of the order of the Court, and that I must accordingly enter judgment based upon that contempt.

This case had its origin in an action filed in the Superior Court of the State of California in and for the County of Alameda, in which the plaintiffs sought to restrain certain picketing and work stoppage activities of the defendants. The Honorable Lewis E. Lercara of said Superior Court, on May 18, 1970, entered a modified temporary restraining order against the defendants which enjoins the defendants, Brotherhood of Teamsters & Auto Truck Drivers, Local No. 70 of Alameda County, International Brotherhood of Teamsters, Chauffeurs, Warehousemen & Helpers of America, Robert Laird, James Muniz, Joseph Arenos, Louis Riga, Charles Mack, Lawrence Diaz, Edward Painter, Alex Ybarraloz, Leroy Nunes, Stanley Botello, Ronald Rocha, Art Soto, Jack Sweeny, Richard S. Durasette, Robert Windsor, Al Leishman and Richard Saramento, and each of them, and their officers, agents, representatives, employees and members, and each and every and all other persons acting at the direction of or in concert with said defendants, enjoining them from:

a. Directing or ordering or otherwise inducing, the employees of the plaintiffs not to perform work for any of said companies;

b. Picketing at any facility or situs of equipment of the plaintiffs where the effect of such picketing is to induce, encourage or cause company employees not to work for plaintiffs;

c. Engaging in any activity for the purpose of causing or with the effect of causing, a stoppage of work for, or strike against plaintiffs;

d. Failing to withdraw any orders or directions to employees of plaintiffs that said employees should engage in a cessation of work for such companies.

A copy of that modified temporary restraining order was duly and timely served upon the Defendant Union, as appears from the affidavit on file in these proceedings and the stipulation arising in connection with the testimony of Mr. Farrell.

Thereafter, on May 18, 1970, the defendants petitioned to remove the said cause to this Court under the provisions of Section 1441 of Title 18, U.S. Code, on a claim that this Court has original jurisdiction under Section 301 of the National Labor Relations Act as amended, 29 U.S.C. Section 185, and at the same time moved to dissolve the injunction of the State Court on the ground that an injunction issued by a State Court against striking and picketing activities by a labor organization and its agents must be dissolved for lack of jurisdiction by a Federal Court following removal of the proceedings, citing as authority *Sinclair Refining Company vs. Atkinson*, 370 U.S. 195.

On May 22nd, 1970, the plaintiffs moved to remand the case to the said Superior Court. Following a hearing in this Court on May 27, 1970, this Court denied the motion for remand, and on June 4, 1970, entered its formal order denying defendants' motion to dissolve the State Court's temporary restraining order. That denial of the motion to dissolve the restraining order was based on the case of *Boys Market, Inc. vs. Retail Clerks' Union, Local 770*, decided by the Supreme Court on June 1, 1970, wherein the Supreme Court expressly overruled its prior decision in the *Sinclair* case, *supra*, upon which the defendants had relied.

The order of the Court of June 4, 1970, provides in its pertinent part:

"The only issue now before the Court is whether or not the District Court is mandated to dissolve the State Court temporary restraining order. The Supreme Court decision in the recent case of *Boys Market, Inc., v. Retail Clerks' Union, Local 770*, — U.S. — (June 1, 1970), is dispositive of the issue. Accordingly, It Is Ordered that the motion to dissolve the State Court temporary restraining order is denied."

The order was dated June 4, 1970.

Defendants' continuing contention that the order of Judge Lercara is no longer in effect is without merit, not only by reason of the order of this Court which denies the motion to dissolve the same, thereby leaving it in continuing full force and effect, but also by reason of the provisions of the Federal removal statute, namely, Section 1450 of Title 28, United States Code, which in its pertinent part provides:

"All injunctions, orders and other proceedings had in such action prior to its removal shall remain in full force and effect until dissolved or modified by the District Court."

The Court further notes that since the entry of that order of June 4th, nothing was done to bring this case at issue, and as far as the record discloses, there is no answer on file on the part of the defendants herein.

The Court further notes that the basic objection, and the only objection made a matter of written record in the form of a formal motion, was the motion to dissolve on the theory that the *Sinclair* decision was applicable.

Under all these circumstances, the Court is satisfied that the matter is properly before it on an order to show cause why the defendant Brotherhood of Teamsters & Auto Truck Drivers, Local No. 70 of Alameda County, International Brotherhood of Teamsters, Chauffeurs, Warehousemen & Helpers of America, should not be found in contempt by reason of the alleged activities on the part of the Union, or caused directly by the Union.

This Court, after having heard all of the evidence before it, including the testimony of the witnesses Crall, Dreher and Ranche, and the stipulation with relation to the exchange of correspondence between counsel evidenced by the affidavit of Wesley J. Fastiff, is satisfied that the said defendant, Local No. 70, is in contempt of the order of this Court. It is satisfied that the contempt was deliberate and designed to flout the order of this Court.

One must bear in mind, as the Supreme Court again said in *United States vs. Mineworkers*:

"The interests of orderly government demand that respect and compliance be given to orders issued by courts possessed of jurisdiction of persons and subject matter. One who defies the public authority and wilfully refuses his obedience does so at his peril. In imposing a fine for criminal contempt, the trial judge may properly take into consideration the extent of the wilfully and deliberate defiance of the Court's order and the seriousness of the consequences of the contumacious behavior, the necessity of effectively terminating the defendants' defiance as required by the public interest and the importance of deterring such acts in the future. Because of the nature of such standards, great reliance must be placed upon the discretion of the trial court."

The Court in its discretion having found from the testimony and the affidavits which I have just alluded to—the Court is satisfied that the Defendant Union, or Respondent Union in this case, did in fact comport itself in such manner as to direct and order employees of the plaintiff not to work for any of the companies involved herein, namely, Granny Goose Foods, Sunshine Biscuits, Inc., and Standard Brands, Inc.; that the Union did direct and order the picketing of the facilities and situs of equipment of these three named companies, where the effect of the picketing was to induce, encourage or cause employees not to work for plaintiffs; that the Union engaged in activities for the purpose of causing, or with the effect of causing, a work stoppage for or strike against the

three companies I just indicated; that the Union has failed to withdraw any orders or directions to employees of these three companies that said employees should engage in a cessation of work for such companies.

Now, having indicated that this was a wilful form of conduct on the part of the defendant, Local 70, it constitutes, as such, an attempt to repudiate and override the instrument of Government in the situation where Government action may be or is indispensable.

Based upon these findings, the Court concludes and finds that the defendant Local No. 70 is in contempt of an outstanding order of this Court. And it appearing that the violation of the Court's order was in open and flagrant defiance of the order of the Court, it is adjudged that the defendant Brotherhood of Teamsters & Auto Truck Drivers, Local No. 70 of Alameda County, International Brotherhood of Teamsters, Chauffeurs, Warehousemen & Helpers of America, an unincorporated association, be fined in the sum of \$200,000, to be paid into the Treasury of the United States through the Clerk of this Court.

\$150,000 of that fine is conditional on the said defendants' failure to purge itself within 24 hours of the date and hour of the signing of the Court's order; \$100,000 of said fine is conditioned upon the said defendant's, namely, Local No. 70, failure to purge itself within 48 hours of the date and hour of this order; and \$50,000 of said fine is conditioned upon the said defendants', Local No. 70, failure to purge itself

within 72 hours of the date of the signing of the Court's order.

Counsel for the petitioner and plaintiff are directed to secure a transcript of the proceedings, at least a transcript of the order of this Court as orally pronounced, reduce the same to writing and submit it for the Court's signature.

Mr. Silbert, I assume you did the best you could under the circumstances. It is unfortunate that the Court was faced with a situation in which it had to find the defendant Union in contempt of Court. When the Court does so, it wants counsel to understand that despite the action taken by the Court, the Court does not mean in any way to appear to be punishing counsel or to appear to be unhappy with counsel. I recognize that the lawyers in any case and in every case must make the best of whatever situation confronts them at the time.

All right.

MR. SILBERT: Your Honor, we intend to appeal your decision, and I'd request a stay of your order pending appeal.

THE COURT: Well, I will grant you a stay of the order upon the deposit of a bond of \$1,000,000 to cover damages.

MR. SILBERT: Thank you, Your Honor.

December 2, 1970, Wednesday at 5:45 p.m. AJZ.

/s/ Alfonso J. Zirpoli

Judge of the United States

District Court

United States District Court
for the Northern District of California

No. C-70-1057 AJZ

Granny Goose Foods, Inc., et al., vs. Brotherhood of Teamsters & Auto Truck Drivers, Local No. 70 of Ala- meda County, et al.,	}	Plaintiffs, Defendants.
--	---	--

NOTICE OF APPEAL

Brotherhood of Teamsters and Auto Truck Drivers, Local 70, hereby appeals to the United States Court of Appeals for the Ninth Circuit from the Order and Judgment of Criminal contempt and each and every provision contained in said Order and Judgment issued by this Court on December 2, 1970 in Case No. C-70-1057 AJZ.

Dated: December 3, 1970

Brundage, Neyhart, Grodin & Beeson
By: /s/ Kenneth N. Silbert
Attorneys for Defendant

In the United States Court of Appeals
for the Ninth Circuit

No. 26,838

<p>Granny Goose Foods, Inc., et al., vs. Brotherhood of Teamsters and Auto Truck Drivers, Local No. 70, Alameda County,</p>	}	<p>Appellees, Appellant.</p>
---	---	---

[U.S.C.A. Filed Dec. 3, 1970]

[U.S. Dist. Ct., Northern Dist. of California

Filed Dec. 7, 1970]

ORDER

Before: HAMLEY and BROWNING, Circuit Judges

The payment of the fine imposed upon appellant by the district court in this proceeding, is stayed pending disposition of this appeal, upon the following conditions: (1) appellant shall immediately purge itself of the asserted contempt of court adjudicated by the district court and shall, pending disposition of this appeal, fully comply with the court order or orders which the district court held had been disobeyed, including the return to available work by employees of appellees who are members of appellant union; and (2) appellant shall post a surety bond, in a form approved by the district court, in a sum

equal to the fine for which appellant becomes liable under the terms of the order under review, conditioned upon the payment of such fine in the event it is upheld on appeal.

This order is subject to reconsideration if a memorandum seeking reconsideration is filed by appellees by December 14, 1970.

Dated: December 3, 1970

United States Circuit Judges

(Letterhead of
Northwestern National Insurance Company
of

Milwaukee, Wisconsin
A Stock Company)

Bond No. S-667560

Premium: \$438.00

[Title omitted in printing]

[Filed Dec. 7, 1970]

Whereas, the Defendants desire to give an undertaking for stay of order imposing fine under Rule 38A of Federal Rules of Criminal Procedure for the United States District Court in and for the Northern District of California.

Now, Therefore, the undersigned Northwestern National Insurance Company, a corporation organized

and existing under the laws of the State of Wisconsin, and duly authorized to transact a general surety business in the State of California, does hereby obligate itself, its successors and assigns to the above entitled court under statutory obligations in the sum of Fifty Thousand and No/100 (\$50,000.00) Dollars.

In testimony whereof the said Surety has caused these presents to be executed and its corporate seal attached by its duly authorized Attorney-in-Fact at San Francisco, California this 4th day of December, 1970.

Northwestern National Insurance Company
By: /s/ John L. Molinari, Attorney-in-Fact

[Title omitted in printing]

[Filed Dec. 8, 1970]

ORDER APPROVING BOND

The Court has examined the bond filed by Defendant, Brotherhood of Teamsters and Auto Truck Drivers, Local 70, pursuant to the Order of the United States Court of Appeals for the Ninth Circuit, dated December 3, 1970, and hereby approves the form of said bond.

Dated: December 7, 1970.

/s/ Alfonso J. Zirpoli
United States District Judge

[Title omitted in printing]

[Filed Dec. 4, 1970]

**AFFIDAVIT OF RICHARD SARMENTO RE
COMPLIANCE WITH CONTEMPT ORDER**

State of California

City and County of San Francisco—ss.

Richard Sarmento, being first duly sworn, deposes as follows:

I am employed as a business representative for Teamsters Local 70, which is party defendant in the above-entitled case. I am assigned to handle the representation of Local 70's members who are employed by the plaintiffs.

In the forenoon of December 3, 1970, I instructed various Local 70 members who were assisting me in the strike against plaintiffs to go to each of the locations where picketing was in effect and direct all pickets to return to Local 70's headquarters. All the pickets had returned to Local 70's office by 1:00 p.m. on that day. I informed all pickets that there was a court order in effect which terminated the strike, and that there would be no further picketing, and that plaintiff's employees were to return to work. There are no further strike or picketing activities in effect, and all such activities had come to an end prior to 1:00 p.m. on December 3, 1970.

In the late afternoon of December 3, 1970, I was informed by Local 70's attorney that the United States Court of Appeals had entered an order which was conditional upon Local 70 terminating all strike and picketing activity. Although we have terminated

all such activity, on the advice of Mr. Beeson on the morning of December 4, 1970 I sent the following telegram to each and every member of Local 70 who was participating in the strike:

"Pursuant to court order you are notified that the strike has ended and you are directed to return to work."

The telegram was sent to the home address of each member.

/s/ Richard Sarmento

Subscribed and sworn to before me this 4th day of December, 1970

(Seal)

/s/ Belle Kendrick

Notary Public

City and County of San Francisco

My Commission Expires Oct. 29, 1973

In the United States District Court for the
Northern District of California

C-70-1057-AJZ

Granny Goose Foods, Inc. et al.
Plaintiffs-Appellees,
vs.

Brotherhood of Teamsters & Auto
Truck Drivers, Local No. 70 of Ala-
meda County et al
Defendants-Appellants.

CERTIFICATE OF CLERK TO RECORD
ON APPEAL

I, C. C. Evensen, Clerk of the United States Dis-
trict Court for the Northern District of California,
do hereby certify that the foregoing and accompany-
ing documents listed below, are the originals, except
the docket entries, which are photostatic copies, filed
in this Court in the above entitled case and that they
constitute the record on appeal herein.

1. Petition for Removal
2. Notice of Removal
3. Notice and motion by defendants to dissolve in-
junction
4. Affidavit of Kenneth N. Silbert
5. Removal bond by defendants in the sum of
\$250.00

6. Amended petition for removal by defendants
7. Order shortening time for hearing of motion to dissolve temporary restraining order
8. Notice of related cases by defendants
9. Notice of motion by plaintiffs and motion to remand action to Superior Court State of California, County of Alameda with supporting papers attached
10. Affidavit of George J. Tichy, II
11. Order shortening time for hearing of motion to remand
12. Supplemental affidavit of George J. Tichy, II
13. Reassignment Order assigning action to Judge Zirpoli
14. Declaration of Byron T. Hawkins
15. Affidavit of Willis B. Court
16. Acknowledgment of service by Kenneth N. Silbert
17. Acknowledgment of service by Victor J. Van Bourg
18. Order denying motion to dissolve State Court Temporary Restraining Order
19. Motion by plaintiffs for Contempt Judgment with supporting papers attached
20. Order shorting time for hearing of motion for Contempt Judgment
21. Notice of Appeal by Defendants to 9th CCA
22. Affidavit of Richard Sarmento

23. Memorandum of points and authorities in support of Order of contempt
24. Certify copy of Order from 9th CCA staying payment of fine imposed upon appellant by District Court pending appeal
25. Bond for undertaking by defendant's in amount of \$50,000.00
26. Order approving bond for undertaking by defendants
27. Original of Reporter's Transcript of Dec. 2, 1970
28. Plaintiff's Exhibits: 1, 2, 3, 4, and 5
29. Docket Entries

In Witness Whereof, I have hereunto affixed my hand and the seal of the above entitled Court this 28th day of December 1970.

C. C. Evensen, Clerk
 By /s/ Theodore H. Kast
 Deputy Clerk

United States Court of Appeals
for the Ninth Circuit

No. 26838

Granny Goose Foods, Inc., a corporation,
and Sunshine Biscuits, Inc., a corpora-
tion.

Plaintiffs-Appellees,

vs.

Brotherhood of Teamsters & Auto Truck
Drivers, Local No. 70 of Alameda County,
International Brotherhood of Teamsters,
Chauffeurs, Warehousemen & Helpers of
America,

Defendant-Appellant.

[Filed Jan. 18, 1973]

Appeal From the United States District Court
for the Northern District of California

Before: DUNIWAY, HUFSTEDLER, and TRASK,
Circuit Judges

HUFSTEDLER, Circuit Judge:

The Union appeals from an order holding it in criminal contempt for violating a temporary restraining order. We reverse because the order expired by operation of law after removal of the cause to the federal court and before the alleged contumacious conduct occurred.

Granny Goose Foods, Inc., and Sunshine Biscuits, Inc. ("Employers"), commenced the action in a California state court by filing a complaint charging the Union with breach of a collective bargaining agreement. It simultaneously filed an application for a temporary restraining order. On May 15, 1970, the state court, *ex parte*, issued a temporary restraining order and an order to show cause why a preliminary injunction should not be granted, made returnable on May 26, 1970. On May 18, 1970, Employers filed an amended complaint virtually identical to the original complaint except for the addition of new parties. On the same date the state court, *ex parte*, issued a modified temporary restraining order reflecting the change in parties and likewise modified the order to show cause, returnable May 26, 1970.

On May 19, 1970, the Union filed a petition to remove the action to the federal court. The following day it filed an amended petition to remove naming the new parties. Immediately after removal, the Union filed a motion to dissolve the temporary restraining order, noticed for May 22, 1970, a date within the life of the state order. Employers simultaneously filed a motion to remand, also noticed for May 22, 1970. Because the case was transferred from one federal judge to another, the motions were not heard until May 27, 1970. The district judge denied the motion to remand on May 27, and it submitted the motion to dissolve.

While the motion to dissolve was pending, the Supreme Court decided *Boys Markets, Inc. v. Retail*

Clerks Union (1970) 398 U.S. 235, a decision that destroyed the foundations of *Sinclair Refining Co. v. Atkinson* (1962) 370 U.S. 195, on which the Union's dissolution motion had been based. On June 4, 1970, the district court denied the motion to dissolve. There was no further action until the proceedings to obtain a contempt order were brought on December 1, 1970, charging the Union with violating the modified temporary restraining order by commencing strike and picketing activities against Employers on November 30, 1970. Employers never applied to the district court for a preliminary injunction. Contempt proceedings, begun on December 2, 1970, concluded with an adjudication of criminal contempt in which a substantial fine was imposed on the Union. This appeal followed.

If the action had been retained by the state court, the temporary restraining order would have expired by operation of law not later than 20 days after issuance of the modified order, *i.e.*, June 7, 1970 (Cal. Code Civ. Proc. § 527¹). If the restraining order had

¹Section 527 provides:

"An injunction may be granted at any time before judgment upon a verified complaint, or upon affidavits if the complaint in the one case, or the affidavits in the other, show satisfactorily that sufficient grounds exist therefor. . . .

"No preliminary injunction shall be granted without notice to the opposite party; nor shall any temporary restraining order be granted without notice to the opposite party, unless it shall appear from facts shown by affidavit or by the verified complaint that great or irreparable injury would result to the applicant before the matter can be heard on notice. In case a temporary restraining order shall be granted without notice, in the contingency above specified, the matter shall be made returnable on an order requiring cause to be shown why the injunction should not be granted, on the earliest day that the business of the court will admit of,

been initially granted by the federal district court, it would have expired not later than June 7, 1970, under the provisions of Rule 65(b) of the Federal Rules of Civil Procedure.²

but not later than 15 days or, if good cause appears to the court, 20 days from the date of such order. When the matter first comes up for hearing the party who obtained the temporary restraining order must be ready to proceed and must have served upon the opposite party at least two days prior to such hearing, a copy of the complaint and of all affidavits to be used in such application and a copy of his points and authorities in support of such application; if he be not ready, or if he shall fail to serve a copy of his complaint, affidavits and points and authorities, as herein required, the court shall dissolve the temporary restraining order. The defendant, however, shall be entitled, as of course, to one continuance for a reasonable period, if he desire it, to enable him to meet the application for the preliminary injunction. The defendant may, in response to such order to show cause, present affidavits relating to the granting of the preliminary injunction, and if such affidavits are served on the applicant at least two days prior to the hearing, the applicant shall not be entitled to any continuance on account thereof. . . ."

We recognize that, under state law, the temporary restraining order would have expired on the specified return date, May 26, 1970. (*e.g.*, *Sharpe v. Brotzman* (1956) 145 Cal. App. 2d 354.) But we assume that the Union would have moved the state court to dissolve, as it did in the federal court, and that there would possibly have been continuances of the return date within the 20-day maximum permitted by statute.

²Rule 65(b) provides:

"A temporary restraining order may be granted without written or oral notice to the adverse party or his attorney only if (1) it clearly appears from specific facts shown by affidavit or by the verified complaint that immediate and irreparable injury, loss, or damage will result to the applicant before the adverse party or his attorney can be heard in opposition, and (2) the applicant's attorney certifies to the court in writing the efforts, if any, which have been made to give the notice and the reasons supporting his claim that notice should not be required. Every temporary restraining order granted without notice shall be indorsed with the date and hour of issuance; shall be filed forthwith in the clerk's office and entered of record; shall define the injury and state why it is irreparable and why the order was granted without notice; and shall expire by its terms within such time after entry, not to exceed 10 days, as the court fixes, unless within the time so fixed the order, for good cause shown, is extended for a like period or unless the party against whom the order is directed consents that it may be

Employers contend that the life of the temporary restraining order was indefinitely prolonged by the provisions of 28 U.S.C. § 1450: "All injunctions, orders, and other proceedings had in such [removed] action prior to its removal shall remain in full force and effect until dissolved or modified by the district court." The temporary restraining order was neither dissolved nor modified by the district court; therefore, it says, the order remained in full force and effect.

Section 1450 does not create a special breed of temporary restraining orders that survive beyond the life span imposed by the state law from which they spring and beyond the life that the district court could have granted them had the orders initiated from the federal court. Section 1450 permits transfer to the federal court of state court restraining orders without any loss of potency during the trip. It adds nothing to the terms of state orders. The purpose of section

extended for a longer period. The reasons for the extension shall be entered of record. In case a temporary restraining order is granted without notice, the motion for a preliminary injunction shall be set down for hearing at the earliest possible time and takes precedence of all matters except older matters of the same character; and when the motion comes on for hearing the party who obtained the temporary restraining order shall proceed with the application for a preliminary injunction and, if he does not do so, the court shall dissolve the temporary restraining order. On 2 days' notice to the party who obtained the temporary restraining order without notice or on such shorter notice to that party as the court may prescribe, the adverse party may appear and move its dissolution or modification and in that event the court shall proceed to hear and determine such motion as expeditiously as the ends of justice require."

For the purpose of this discussion we assume, *arguendo*, but we do not decide that Union's motion to dissolve was a consent to hold the matter in status quo until the motion could be decided and that it was, to that extent, a consent to an extension of the order within the exception to Rule 65(b).

1450 is to prevent a break in the force of an injunction or a restraining order that could otherwise occur when jurisdiction is being shifted. Employers' construction of section 1450 would offend the policy of California and federal policy imposing strict limitations on the longevity of temporary restraining orders. The temporary restraining order could not survive beyond June 7, 1970, the last day within its maximum state life, a date months before the alleged contumacious acts transpired.

If Employers wanted a preliminary injunction, they easily could have sought one. They did not do so. The Union's unsuccessful effort to dissolve the order before it died a natural death did not convert the temporary restraining order into a preliminary injunction or estop it from relying on the death certificate.

The order is Reversed and the contempt proceedings are vacated.

TRASK, Circuit Judge, dissenting:

The issue upon which this court is called to rule, is the effect of 28 U.S.C. § 1450 on the duration of a temporary restraining order issued by a state court in a case which is then removed to the federal court.

Had the case not been removed, the California Code of Civil Procedure would have caused such a temporary restraining order issued *ex parte* to be extinguished in a maximum of 20 days; had the same order been issued originally in the federal court, it would have ceased to exist in the same period of time.

When such a case, with an outstanding restraining order issued and pending, is removed, it becomes subject to 28 U.S.C. § 1450 which provides in pertinent part:

"All injunctions, orders, and other proceedings had in [a removed] action prior to its removal shall remain in full force and effect until dissolved or modified by the district court."

The majority of the court is of the opinion that the purpose of this section is to "prevent a break" in the continuity of a restraining order that "could otherwise occur" during the change from state to federal court. It would seem that if such were the purpose, the statute could have very simply said so. Or, the Congress could have provided that the restraint should not in any event continue in effect for a greater period of time than that provided by the state statute or the state court's order. It did not. It provided very simply, but very clearly, that all injunctions should remain in full force and effect "until dissolved or modified by the district court." It thus requires affirmative action on the part of one of the parties before it may be dissolved or modified. And if the district court refuses to dissolve it, the temporary restraining order issued *ex parte* remains in force until the case is tried on its merits and the temporary injunction or permanent injunction is granted or denied.

In this case the pleadings disclose that the employers, as plaintiffs, filed a complaint and then an amended complaint seeking relief against the defen-

dant Union's alleged unlawful interference with its activities. The complaint sought a permanent injunction. It also asked for a temporary restraining order pending a hearing on an order to show cause and that a preliminary injunction be granted upon the hearing of the order to show cause to continue during the pendency of the action. The action was removed to federal court before the return date of the order to show cause in the state court. But the Union promptly filed a motion in federal court to dissolve the temporary restraining order and caused the motion to be brought to a hearing. The motion to dissolve was denied upon that hearing leaving the order of restraint against the Union in full force and effect. At this point the case was in exactly the same posture as it would have been had the order to show cause been heard and the preliminary injunction granted on that order pending a trial on the merits of the permanent relief. The temporary restraining order had been disposed of by hearing and decision. The order continuing the restraint was, in effect, a preliminary injunction pending a hearing on the merits. *Morning Telegraph v. Powers*, 450 F.2d 97, 99 (2nd Cir. 1971), cert. denied, 405 U.S. 954 (1972); *Appalachian Volunteers, Inc. v. Clark*, 432 F.2d 530, 533 (6th Cir. 1970), cert. denied, 401 U.S. 939 (1971). *Morning Telegraph, supra*, points out that in applying the distinction between a temporary restraining order and a preliminary injunction,

"... the label put on the order by the trial court is not decisive." Wright, *Federal Courts* 459 (2d ed. 1970), quoted with approval in *Belnap v.*

Leary, 427 F.2d 496, 498 (2d Cir. 1970). Here, the practical effect of the refusal to dissolve the temporary restraining order was the equivalent of a grant of preliminary injunctive relief. *Peabody Coal Co. v. Barnes*, 308 F.Supp. 902 (E.D. Mo. 1969)." 450 F.2d at 99.

In *Peabody Coal Co. v. Barnes*, *supra*, the district court said, "[u]nder Section 1450, 28 U.S.C., the temporary restraining order issued by the state court remains in full force and effect after the removal until and unless dissolved by this Court." 308 F.Supp. at 903. In that case the temporary restraining order issued without notice remained in effect some two and one-half months without a request for a hearing.

Indeed, the California courts appear to follow the same reasoning. In *Gray v. Bybee*, 60 Cal. App. 2d 564, 141 P.2d 32, 35 (1943), the court said:

"The granting or denial of a temporary restraining order is discretionary with the trial judge (14 Cal.Jur 180, sec. 7) and amounts to a mere preliminary or interlocutory order to keep the subject of litigation in status quo pending the determination of the action on its merits. *People v. Black's Food Store*, 16 Cal.2d 59, 105 P.2d 361, 362; 14 Cal.Jur. 180, sec. 9."

It is asserted here that if the employers had wanted a preliminary injunction they could easily have sought one. They did seek one in their pleadings. After the trial court denied the motion to dissolve there was no reason for the employers to take the initiative. The restraint they sought had been ob-

tained. Had the Union desired to litigate the merits of the trial court's refusal to dissolve the temporary restraining order, the Union could easily have done so, either by an appeal from the trial court's order, treating it as the grant of a preliminary injunction, see *Morning Telegraph v. Powers*, *supra*, or by bringing the case on for trial on the merits. It did neither.

The argument that to construe Section 1450 according to its plain language would somehow offend the policy of California and, therefore, the California time limitation should control, is difficult to follow. It is well established that once a case is removed from state court to federal court, questions of procedure are governed by federal law and not state law. For instance, the time in which to file an amended complaint is governed by federal law and not state law.

Mr. Justice Douglas said in *Freeman v. Bee Machine Co.*, 319 U.S. 448, 452 (1943):

"The jurisdiction exercised on removal is original not appellate. *Virginia v. Rives*, 100 U.S. 313, 320. The forms and modes or proceeding are governed by federal law. *Thompson v. Railroad Companies*, 6 Wall. 134; *Hurt v. Hollingsworth*, 100 U.S. 100; *West v. Smith*, 101 U.S. 263; *King v. Worthington*, 104 U.S. 44; *Ex parte Fisk*, 113 U.S. 713; *Northern Pacific R. Co. v. Paine*, 119 U.S. 561; *Twist v. Prairie Oil & Gas Co.*, 274 U.S. 684; *Rorick v. Devon Syndicate*, 307 U.S. 299."

Similarly, where a conflict exists between state rule and federal rule as to service of process in a diversity jurisdiction case, the federal rule applies. *Hanna v.*

Plumer, 390 U.S. 460 (1965). See also, *Seal v. Industrial Electric, Inc.*, 362 F.2d 788 (5th Cir. 1966). A federal court was not limited by a state 30-day rule to set aside a default judgment. *Munsey v. Testworth Laboratories, Inc.*, 227 F.2d 902, 903 (6th Cir. 1955).

So, in this case I would hold that Section 1450 protects the restraining order during its removal trip and preserves it as it reaches its destination in the federal court. At that point federal procedural and statutory rules take control. Rule 65(b) Fed. R. Civ. P. would prevail over the state rule as to termination, and the "clear statutory command [of Section 1450] must take precedence over the arguably contrary rule of procedure [of rule 65(b)]." *Appalachian Volunteers, Inc. v. Clark*, 432 F.2d 530, 533 (6th Cir. 1970).

I would therefore conclude that the temporary restraining order continued in existence as a preliminary injunction after hearing by the district court and its denial of the motion to dissolve the restraint. The order of contempt was not clearly erroneous and the judgment of the trial court should be affirmed.

/s/ Ozell M. Trask
United States Circuit Judge

United States Court of Appeals
for the Ninth Circuit

No. 26838

Granny Goose Foods, Inc., a corporation,
Sunshine Biscuits, Inc., a corporation,
Standard Brands, Inc., a corporation,
Plaintiffs-Appellees,

vs.

Brotherhood of Teamsters & Auto Truck
Drivers, Local No. 70 of Alameda County,
International Brotherhood of Teamsters,
Chauffeurs, Warehousemen & Helpers of
America,
Defendant-Appellant.

[Filed Feb. 22, 1973]

ORDER

Before: DUNIWAY, HUFSTEDLER, and TRASK,
Circuit Judges

The panel as constituted in the above case has voted to deny the petition for rehearing and to reject the suggestion for a rehearing en banc.

The full court has been advised of the suggestion for an en banc hearing, and no judge of the court has requested a vote on the suggestion for rehearing en banc. Fed. R. App. P.35(b).

The petition for rehearing is denied and the suggestion for a rehearing en banc is rejected.